

AGENDA

**WILSONVILLE CITY COUNCIL MEETING
JULY 6, 2015
7:00 P.M.**

**CITY HALL
29799 SW TOWN CENTER LOOP
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr
Councilor Susie Stevens

Councilor Julie Fitzgerald
Councilor Charlotte Lehan

CITY COUNCIL MISSION STATEMENT

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

Executive Session is held in the Willamette River Room, City Hall, 2nd Floor

- 5:00 P.M. EXECUTIVE SESSION [20 min.]**
A. Pursuant to ORS 192.660(2)(i) Performance Evaluation of Public Officer
ORS 192.660(2)(e) Real Property Transactions
ORS 192.660(2)(f) Exempt Public Records
- 5:30 P.M. REVIEW OF AGENDA [5 min.]**
- 5:35 P.M. COUNCILORS' CONCERNS [5 min.]**
- 5:40 P.M. PRE-COUNCIL WORK SESSION**
- A. Frog Pond Discussion (Neamtzu) [15 min.]
B. Ballot Measure re Coffee Creek Urban Renewal District (Kohlhoff/Retherford) [10 min.]
C. Ordinance 769 Amending Chapter 3 and 8 of Code (Rappold) [10 min.]
D. Tooze Road Surplus Discussion (Retherford) [10 min.]
- 6:50 P.M. ADJOURN**
-

CITY COUNCIL MEETING

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, July 6, 2015 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on June 22, 2015. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.

7:00 P.M. CALL TO ORDER

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

7:05 P.M. MAYOR'S BUSINESS

- A. City Manager Contract Renewal **Page 1**
- B. Upcoming Meetings **Page 7**

7:25 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

7:30 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

- A. Council President Starr – (Park & Recreation Advisory Board Liaison)
- B. Councilor Fitzgerald – (Development Review Panels A & B Liaison)
- C. Councilor Stevens – (Library Board and Wilsonville Seniors Liaison)
- D. Councilor Lehan– (Planning Commission and CCI Liaison)

7:40 P.M. CONSENT AGENDA

- A. **Resolution No. 2544** **Page 8**
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute A Professional Services Agreement With Wallis Engineering For The Charbonneau High Priority Utility Repair Project (Capital Improvement Project #2500 & #7500) (staff – Weigel)
- B. Minutes of the June 15, 2015 Council Meeting. (staff – King) **Page 66**

7:45 P.M. PUBLIC HEARING

- A. **Ordinance No. 769** – 1st Reading **Page 75**
An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 3, City Property And Chapter 8, Environment To Add Updated Erosion Control Requirements (staff – Rappold)

8:30 P.M. NEW BUSINESS

- A. **Resolution No. 2543** **Page 263**
A Resolution Of The Wilsonville City Council Adopting The Intergovernmental Agreement Between Metro And The City Of Wilsonville To Establish The Wilsonville-Metro Community Enhancement Program And Creating The Wilsonville-Metro Community Enhancement Committee. (staff – Ottenad)

6/26/2015 9:52 AM Last Updated

9:00 P.M. CITY MANAGER'S BUSINESS

A. Summer Recess August 17, 2015

9:10 P.M. LEGAL BUSINESS

9:15 P.M. ADJOURN

An Urban Renewal Agency Meeting will immediately follow.

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting:-Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or king@ci.wilsonville.or.us

**CITY OF WILSONVILLE
EMPLOYMENT AGREEMENT**

This Employment Agreement (“Agreement”) is made and entered into on the ____ day of July, 2014, by and between the City of Wilsonville of Oregon, a municipal corporation (“City”) and Bryan Cosgrove (“Employee”), both of whom understand and agree as follows:

WITNESSETH:

WHEREAS, City desires to employ Bryan Cosgrove as City Manager of the City of Wilsonville, as provided by the Wilsonville City Charter and Section 2.105 of the Wilsonville Code; and

WHEREAS, it is the desire of the Governing Body, hereinafter called “Council,” to establish certain conditions of employment, to establish certain benefits, and to set working conditions of said Employee; and

WHEREAS, Employee desires to accept employment as City Manager of the City of Wilsonville;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties and Work Hours

City hereby agrees to employ Employee as City Manager of the City of Wilsonville. Employee agrees to devote his full-time efforts to performing the functions and duties of City Manager, as described in the Wilsonville City Charter and Section 2.105 of the Wilsonville Code, and to perform other legally permissible and proper duties and functions as the Wilsonville City Council (“Council”) assigns to him. Employee’s normal work hours are generally 8 am to 5 pm. In addition, due to the nature of the City Manager’s position, Employee will be required to attend numerous evening and some occasional weekend meetings. As a result, City allows for reasonable flexibility in the normal work hours and also provides for up to five (5) “compensatory time” days off, to be used in Employee’s reasonable discretion, at times when his workload and meeting schedule allow. Any additional compensatory days will require prior City Council approval.

Section 2. Employment Date and Status

Employment is at all times AT WILL, meaning Employee can resign and City can terminate Employee’s employment at any time, with or without cause, subject to the severance

benefits described below. Employee will be exclusively employed by City commencing on June 20, 2011, which date is hereinafter referred to as the Employment Date.

Section 3. Compensation and Car Allowance

Employee will receive annual compensation of One Hundred Forty Thousand, Nine Hundred Five Dollars and Forty-Seven Cents (\$140,905.47) (“Salary”). Thereafter, Salary will be reviewed by Council annually as a part of Employee’s annual performance review, as described in Section 8. In addition to Salary, because Employee is required to use his personal vehicle to travel to attend to City business, Employee will receive a Four Hundred Dollar (\$400) per month (\$4,800 annually) car allowance. In addition to the foregoing, Employee will receive the standard benefits offered to City employees, as outlined in Section 4 below.

Section 4. Other Benefits

City will provide Employee with a standard benefit package, as is offered all other administrative full-time City employees, including health, dental and life insurance, PERS benefits, and sick leave. In addition, Employee will earn twenty (20) days of vacation annually. The employee has the option to cash out five days (40 hours) of vacation time at the employee’s hourly rate of \$67.74. In addition to the standard City benefits, management employees, including the City Manager, are also enrolled in a 401(a) retirement plan after six (6) months of employment. The City will contribute four percent (4%) of the Employee’s base Salary to the Employee’s 401(a) retirement plan. This plan vests over a six (6) year period, with no vesting until the second year of employment. Details on all benefits are available through the Human Resources Department.

Section 5. Dues and Subscriptions

City agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for his continuation and reasonable participation in the International City/County Management Association (“ICMA”) and the Oregon City/County Management Association (“OCCMA”), which participation is desirable for his continued professional growth and advancement, and also for the good of City.

Section 6. Professional Development

City encourages Employee to attend the annual League of Oregon Cities conference and a spring and summer conference for Oregon city managers. Employee may also attend conferences and meetings of in-state committees or commissions of which Employee has been approved by City to be a participating member. Out-of-state travel for conferences and meetings and memberships on national committees or commissions may be allowed if budgeting allows and such travel is deemed beneficial for the professional development of Employee and also

benefits City. Such out-of-state or extraordinary travel will require prior approval by Council. Having authorized membership of Employee in ICMA and OCCMA, City will pay Employee's membership fees and reasonable attendance costs to their annual conferences, in accordance with City's travel and expense guidelines and policies.

Section 7. Civic Involvement

City and Employee agree that it is necessary and desirable for Employee to be an active participant in Wilsonville community activities and civic organizations that compliment his position as City Manager and give him positive visibility in the community. City agrees to pay for membership in one or more civic organizations; provided, however, Council, in its sole discretion, shall have the right to disapprove membership in any organization that would be in conflict with or could reasonably cause a conflict of interest with Employee's role as City Manager.

Section 8. Performance Evaluations

Council shall review and evaluate the performance of Employee approximately annually or more frequently than annually if performance issues exist. During the first year of employment, Council may elect to conduct a six (6) month review of performance. Said review and evaluation shall be in accordance with the specific criteria developed by City for City Manager review. Said criteria may be added to or deleted from as Council may from time to time determine. In conjunction with such review, Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of City and attainment of Council's policy objectives. Council and Employee shall work together to establish priorities among those various goals and objectives. Once determined and agreed upon by Employee and Council, the goals and objectives will be reduced to writing and will be used to evaluate Employee's performance throughout that goal year. The goals will be set to generally be attainable within the time limitations specified and within the annual operating and capital budgets and appropriations provided for.

Section 9. Termination and Severance Pay

In the event Employee is terminated by Council, and at such time of termination Employee remains willing and able to perform his duties under this Agreement, then if such termination is not "For Cause," City agrees to pay Employee a severance payment equal to six (6) months' Salary plus reimbursement for health benefits in place at the time of termination ("Severance"). Payment of the Severance is conditioned upon Employee signing a Settlement and Release of Claims Agreement in consideration of such payment. Council may elect to pay the dollars portion of the Severance Payment in a lump sum or in six (6) equal monthly installments. To the extent allowed by law, COBRA medical coverage premiums will be reimbursed after payment by Employee monthly for six (6) months. Severance will not apply if Employee either does not sign the Settlement and Release of Claims Agreement or if Employee

is terminated “For Cause.” As used herein, “For Cause” shall mean that Employee is terminated because of malfeasance, gross negligence, insubordination, theft, deception (by material untrue statement or material intentional omission), fraud, or a criminal felony conviction.

No Severance will be paid if Employee voluntarily leaves his position, if Employee for any reason cannot meet the bonding requirements of City, or if Employee is terminated by City before the end of his introductory period of six (6) months.

In the event Employee is unable to work because of disability, the Severance amount set forth in Section 10 shall apply in lieu of the above Severance.

If Employee finds other employment within the six (6) month Severance period, then Severance will cease to be paid as soon as Employee begins such other work, and if it has been paid in advance, it shall be proportionately repaid to City. Similarly, if Employee becomes eligible for other medical coverage within the six (6) month period, he shall notify City and medical coverage reimbursement will cease beginning with the first day of the month during which he begins receiving medical coverage.

In the event Employee voluntarily resigns his position with City, Employee agrees to use good faith efforts to give City three (3) months’ notice in advance, unless the parties otherwise agree. Employee shall not be entitled to Severance if Employee voluntarily resigns, regardless of how and when notice is given.

Section 10. Disability

If Employee is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period that exceeds exhaustion of allowed state and federal family medical leaves, City shall have the option to terminate this Agreement and, in that case, Severance will be equal to three (3) months of wages and health benefits, but will cease to be paid as soon as disability insurance proceeds begin to be received, if such payments occur sooner than the expiration of the three (3) month Severance period.

Section 11. Suspension in Lieu of Termination or Immediate Termination

City may suspend Employee with full pay and benefits at any time during the term of this Agreement, but only if a majority of Council vote to suspend Employee pending an investigation into allegations of malfeasance, gross negligence, insubordination, theft, deception, fraud, or a criminal felony charge. Suspension discussion shall occur in executive session, to the extent permitted under Oregon public meetings laws. The action to suspend will be taken in a public meeting, to the extent required by Oregon law. Employee shall be given written notice setting forth any allegations that could lead to suspension at least five (5) days prior to such executive session and shall be given the opportunity to present defenses or provide a statement during executive session, but Employee shall not be allowed to be present during Council deliberations that follow. During that five (5) day or more interim period before the matter can be heard by

Council, City may temporarily suspend Employee with pay. Nothing contained herein shall be construed to require a suspension before termination.

Section 12. Indemnification

City shall defend, save harmless, and indemnify Employee against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager. City may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. No indemnification shall apply to acts done outside the course and scope of employment.

Section 13. Bonding

City shall bear the cost of any fidelity or other bonds required of Employee under any law or occurrence relating to Employee's employment as City Manager.

Section 14. Other Terms and Conditions of Employment

Council, in consultation with Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, or any other law.

Section 15. General Provisions

This Agreement shall constitute the entire agreement between the parties.

This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and affect.

This Agreement may only be amended in writing, signed by both City and Employee.

Waiver of any provision of this Agreement, either by City or Employee, shall not constitute a future waiver of that or any other provision of this Agreement.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon, and venue for any dispute shall be in Clackamas County.

This Agreement, along with City's employment policies (as they may be amended and expanded from time to time) which have been or will be provided to and signed by Employee, sets forth the entire Agreement between the parties with respect to the subject matter contained herein and supersedes all prior agreements, negotiations, promises, or communications that are not contained herein.

IN WITNESS WHEREOF, the City of Wilsonville has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by its City Recorder. Employee has signed and executed this Agreement. This Agreement may be signed in counterpart and with duplicate originals so that City and Employee will both have an original copy of this Agreement.

DATED: June ____, 2014.

CITY OF WILSONVILLE

By: _____
Tim Knapp
As Its: Mayor

EMPLOYEE

Bryan Cosgrove

ATTEST:

Sandra C. King, MMC, City Recorder

APPROVED AS TO FORM:

Michael E Kohlhoff, City Attorney

CITY COUNCIL ROLLING SCHEDULE

Board and Commission Meetings 2015

Items known as of 06/26/15

July

DATE	DAY	TIME	MEETING	LOCATION
7/6	Monday	7 p.m.	City Council Meeting	Council Chambers
7/8	Wednesday	6 p.m.	Planning Commission	Council Chambers
7/9	Thursday	6:30 p.m.	Parks & Recreation Advisory Board	Council Chambers
7/13	Monday	6:30 p.m.	DRB Panel A	Council Chambers
7/20	Monday	7 p.m.	City Council Meeting	Council Chambers
7/22	Wednesday	6:30 p.m.	Library Board	Library
7/27	Monday	6:30 p.m.	DRB Panel B	Council Chambers

COMMUNITY EVENTS

Wilsonville Farmers Market

Thursdays– 4 p.m. to 8 p.m. at Sofia Park
WilsonvilleMarket.com

Movies in the Park

July 10 – McFarland USA at dusk at the Memorial Park
River Shelter

Graham Oaks Park Day

July 11 – noon to 5 p.m.
Graham Oaks Nature Park – information at
OregonMetro.gov/grahamoaks

Canyon Creek Pedestrian Enhancement Open House

July 14 – 6 p.m.
City Hall Willamette River Rooms I and II

Neighborhood BBQ – Courtside

July 15 – 5-7 p.m.

Concerts in the Park -- Town Center Park

July 23 – 6:30 p.m. Curtis Salgado





**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: July 6, 2015		Subject: Resolution No. 2544 Charbonneau High Priority Utility Repair – CIP 2500 & 7500 – Consultant Contract Award Staff Member: Zachary Weigel, P.E., Civil Engineer Department: Community Development	
Action Required		Advisory Board/Commission Recommendation	
<input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable Comments:	
Staff Recommendation: Staff recommends approval of Resolution No. 2544			
Recommended Language for Motion: I move to approve Resolution No. 2544			
Project / Issue Relates To: <i>[Identify which goal(s), master plans(s) your issue relates to.]</i>			
<input checked="" type="checkbox"/> Council Goals/Priorities Well-Maintained Infrastructure	<input checked="" type="checkbox"/> Adopted Master Plan(s) Charbonneau Consolidated Improvement Plan	<input type="checkbox"/> Not Applicable	

ISSUE BEFORE COUNCIL:

A City of Wilsonville Resolution authorizing the City Manager to execute a professional services agreement not to exceed \$366,273.00 with Wallis Engineering.

EXECUTIVE SUMMARY:

The Charbonneau High Priority Utility Repair project will repair, rehabilitate and/or replace the Priority 1 sewer and storm deficient pipelines at 15 individual locations within the Charbonneau

District. The Consultant will provide engineering design plans and support City staff during bidding and construction of the project.

The Charbonneau Consolidated Improvement Plan, adopted on August 4, 2014, identified these sewer and storm pipe lines as being the most deficient and given the highest priority for repair. These high priority utility repairs represent the first three years of the planned 25 year Charbonneau utility repair and replacement program.

In response to the City's advertisement, a total of six proposals were received on May 28, 2015. Staff evaluated the submitted proposals and unanimously selected Wallis Engineering to perform engineering design services for this project. Notice of intent to award the contract to Wallis Engineering was sent to all parties who submitted proposals electronically and by mail on June 9, 2015.

EXPECTED RESULTS:

Wallis Engineering will provide engineered design plans and construction specifications for the 15 highest priority utility locations within Charbonneau making the project ready for bid and construction.

TIMELINE:

Upon completion of preliminary (60 percent) design, the 15 utility repair locations will be separated into three separate phases to be constructed in consecutive years. Advance (90 percent) engineering design and specifications for all three phases is expected to be completed by December 31, 2015. Bidding and construction of each phase of work is expected to occur in the summer of 2016, 2017, and 2018.

CURRENT YEAR BUDGET IMPACTS:

The sewer portion, Project #2500 is funded through sewer operating fees. The stormwater portion, Project #7500, is financed through an interfund loan from the General Fund, which will be paid back with stormwater operation fees. The adopted FY 2015-16 Wilsonville budget includes \$439,494.00 for sewer and \$811,425.00 for storm for design, construction, contract administration, and overhead of the first phase of the high priority utility repairs within Charbonneau.

The Professional Services Agreement with Wallis Engineering includes \$340,813 for design and construction management of the first three phases of the Charbonneau utility repairs with an additional \$25,461 contingency identified for monument record surveys should any survey monuments be disturbed during construction. The anticipated expenditure schedule for this contact is FY 15/16 - \$256,600, FY16/17 – \$54,837, FY 17/18 - \$54,836.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 6/25/15

LEGAL REVIEW / COMMENT:

Reviewed by: B. Jacobson Date: 6/25/15

COMMUNITY INVOLVEMENT PROCESS:

Staff met with Charbonneau residents on July 30, 2014 to share the results of the Charbonneau Consolidated Improvement Plan. As the design plans are developed, City staff will share the plans with the Charbonneau residents and incorporate their comments and concerns into the final project designs.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY (businesses, neighborhoods, protected and other groups):

The Charbonneau High Priority Utility Repair project will replace the most deficient sections of sewer and storm pipe within the Charbonneau District. The Wilsonville community will benefit from the project by replacing aging and deficient infrastructure with newer materials that are expected to remain in good working condition for the next 75 plus years.

ALTERNATIVES:

City staff, with the help of the design consultant, will evaluate a number of pipe rehabilitation and repair methods to help reduce the construction impact to the Charbonneau residents. The evaluation will include use of trenchless technology where appropriate to avoid open trenching of the roadways within the Charbonneau District.

CITY MANAGER COMMENT:

ATTACHMENTS:

Attachment "A", Resolution No. 2544

Attachment "B", PSA, Scope of Work, Map, & Rate Schedule

RESOLUTION NO. 2544

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WALLIS ENGINEERING FOR THE CHARBONNEAU HIGH PRIORITY UTILITY REPAIR PROJECT (CAPITAL IMPROVEMENT PROJECT #2500 & #7500)

WHEREAS, the City has planned and budgeted for design of Capital Improvement Project #2500 and #7500, known as the Charbonneau High Priority Utility Repair project (the Project); and

WHEREAS, the City solicited proposals from qualified consultants for the Project that duly followed the State of Oregon Public Contracting Rules and the City of Wilsonville Municipal Code; and

WHEREAS, Wallis Engineering submitted a proposal for the Project on May 28, 2015 and was subsequently evaluated and determined to be the most qualified Consultant to perform the work; and

WHEREAS, following the qualifications based selection process and under the direction of the City, a detailed scope of work was prepared, and the fee for the scope was negotiated and found to be acceptable and appropriate for the services to be provided.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The procurement process for the Project duly followed Oregon Public Contracting Rules and Wallis Engineering was determined to be the most qualified to perform the work.
2. The City of Wilsonville, acting as the Local Contract Review Board, authorizes the City Manager to enter into, on behalf of the City of Wilsonville, a Professional Services Agreement with Wallis Engineering for a stated value of \$366,273.00.
3. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 6th day of July 2015, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Knapp

Council President Starr

Councilor Goddard

Councilor Fitzgerald

Councilor Stevens

**CITY OF WILSONVILLE
PROFESSIONAL SERVICES AGREEMENT
CHARBONNEAU HIGH PRIORITY UTILITY REPAIR
(CIP #2500 & #7500)**

This Professional Services Agreement (“Agreement”) is made and entered into on this _____ day of _____, 2015 (“Effective Date”) by and between the **City of Wilsonville**, a municipal corporation of the State of Oregon (hereinafter referred to as the “City”), and **Wallis Engineering, PLLC, LLC**, a Washington limited liability company (hereinafter referred to as “Consultant”).

RECITALS

WHEREAS, the City requires services which Consultant is capable of providing, under terms and conditions hereinafter described; and

WHEREAS, Consultant represents that Consultant is qualified to perform the services described herein on the basis of specialized experience and technical expertise; and

WHEREAS, Consultant is prepared to provide such services as the City does hereinafter require.

NOW, THEREFORE, in consideration of these mutual promises and the terms and conditions set forth herein, the parties agree as follows:

AGREEMENT

Section 1. Term

The term of this Agreement shall be from the Effective Date until all services required to be performed hereunder (“Services”) are completed and accepted, unless earlier terminated in accordance herewith. Except in the event of an extension of time, agreed to in writing by the City, all Services must be completed by no later than June 30, 2018.

Section 2. Consultant’s Services

2.1. Consultant shall diligently perform the Services according to the requirements and deliverable dates identified in the Scope of Services, attached hereto as **Exhibit A** and incorporated by reference herein, for the Charbonneau High Priority Utility Repair Project (“Project”). Maps of Charbonneau showing designated work locations are attached hereto as **Exhibit B**.

2.2. All written documents, drawings, and plans submitted by Consultant in conjunction with the Services shall bear the signature, stamp, or initials of Consultant’s authorized Project Manager. Any documents submitted by Consultant which do not bear the

signature, stamp, or initials of Consultant's authorized Project Manager, will not be relied upon by the City. Interpretation of plans and answers to questions regarding the Services or Scope of Services given by Consultant's Project Manager may be verbal or in writing, and may be relied upon by the City, whether given verbally or in writing. If requested by the City to be in writing, Consultant's Project Manager will provide such written documentation.

2.3. Consultant will not be deemed to be in default by reason of delays in performance due to reasons beyond Consultant's reasonable control, including but not limited to strikes, lockouts, severe acts of nature, or other unavoidable delays or acts of third parties not under Consultant's direction and control ("Force Majeure"). In the case of the happening of any Force Majeure event, the time for completion of the Services will be extended accordingly and proportionately by the City, in writing. Lack of labor, supplies, materials, or the cost of any of the foregoing shall not be deemed a Force Majeure event.

2.4. The existence of this Agreement between the City and Consultant shall not be construed as the City's promise or assurance that Consultant will be retained for future services beyond the Scope of Services described herein.

2.5. Consultant shall maintain the confidentiality of any confidential information that is exempt from disclosure under state or federal law to which Consultant may have access by reason of this Agreement. Consultant warrants that Consultant's employees assigned to work on the Services provided in this Agreement shall be clearly instructed to maintain this confidentiality. All agreements with respect to confidentiality shall survive the termination or expiration of this Agreement.

Section 3. Compensation

3.1. Except as otherwise set forth in this **Section 3**, the City agrees to pay Consultant on a time and materials basis, guaranteed not to exceed THREE HUNDRED SIXTY-SIX THOUSAND TWO HUNDRED SEVENTY-THREE DOLLARS (\$366,273) for performance of the Services ("Compensation Amount"). Any compensation in excess of the Compensation Amount will require an express written Change Order to be executed between the City and Consultant.

3.2. During the course of Consultant's performance, if the City, through its Project Manager, specifically requests Consultant to provide additional services that are beyond the Scope of Services described on **Exhibit A**, Consultant shall provide such additional services and bill the City at the hourly rates outlined on Consultant's Rate Schedule, as set forth in **Exhibit C**. Compensation above the amount shown in **Subsection 3.1** above requires a written Change Order, executed in compliance with the provisions of **Section 16**.

3.3. Unless expressly set forth on Consultant's Rate Schedule as a reimbursable expense item that is not included in the Compensation Amount of **Subsection 3.1**, or as an additional charge for which a written Change Order has been approved, in accordance with **Subsection 3.2** and the requirements of **Section 16**, Consultant shall only be entitled to the Compensation Amount specified in **Subsection 3.1**.

3.4. Except for amounts withheld by the City pursuant to this Agreement, Consultant will be paid for Services for which an itemized invoice is received by the City within thirty (30) days of receipt, unless the City disputes such invoice. In that instance, the undisputed portion of the invoice will be paid by the City within the above timeframe. The City will set forth its reasons for the disputed claim amount and make good faith efforts to resolve the invoice dispute with Consultant as promptly as is reasonably possible.

3.5. The City will be responsible for the direct payment of required fees payable to governmental agencies, including but not limited to plan checking, land use, zoning, and all other similar fees resulting from this Project, that are not specifically covered by **Exhibit A**.

3.6. Consultant's Compensation Amount and Rate Schedule are all inclusive and include, but are not limited to, all work-related costs, expenses, salaries or wages, plus fringe benefits and contributions, including payroll taxes, workers compensation insurance, liability insurance, profit, pension benefits and similar contributions and benefits, technology and/or software charges, office expenses, and all other indirect and overhead charges.

Section 4. Prevailing Wages

This is a contract for a Public Works Project subject to ORS 279C.800 to 279C.870. Therefore, not less than the current applicable state prevailing wage must be paid on this Project to those employees or subcontractors subject to payment of prevailing wages. Wage rates for this Project are those published by BOLI effective January 1, 2015, and all subsequent amendments. The BOLI prevailing wage rate for public works contracts can be found at the following web address: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. Because this is a public works contract subject to payment of prevailing wages, each worker in each trade or occupation employed in the performance of the Services, either by Consultant, a subcontractor, or other person doing or contracting to do, or contracting for the whole or any part of the Services, must be paid not less than the applicable state prevailing wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.838 and 279C.840, if applicable. Consultant must comply with all public contracting wages required by law. Consultant and any subcontractor, or their sureties, shall file a certificate of rate of wage as required by ORS 279C.845. If the City determines at any time that the prevailing rate of wages has not been or is not being paid as required herein, it may retain from the moneys due to Consultant an amount sufficient to make up the difference between the wages actually paid and the prevailing rate of wages, and may also cancel the contract for breach. Consultant shall be liable to the workers affected for failure to pay the required rate of wage, including all fringe benefits under ORS 279C.840(5). Consultant shall include a contract provision in compliance with this paragraph in every subcontract and shall require each subcontractor to include it in subcontract(s).

Section 5. City's Responsibilities

The scope of the City's responsibilities, including those of the City's Project Manager, are also set forth in the Scope of Services. The City will designate a Project Manager to facilitate day-

to-day communication between Consultant and the City, including timely receipt and processing of invoices, requests for information, and general coordination of City staff to support the Project.

Section 6. City's Project Manager

The City's Project Manager is Zach Weigel. The City shall give Consultant prompt written notice of any redesignation of its Project Manager.

Section 7. Consultant's Project Manager

Consultant's Project Manager is Adam Crafts. In the event that Consultant's designated Project Manager is changed, Consultant shall give the City prompt written notification of such redesignation. Recognizing the need for consistency and knowledge in the administration of the Project, Consultant's Project Manager will not be changed without the written consent of the City, which consent shall not be unreasonably withheld. In the event the City receives any communication from Consultant that is not from Consultant's designated Project Manager, the City may request verification by Consultant's Project Manager, which verification must be promptly furnished.

Section 8. Project Information

Except for confidential information designated by the City as information not to be shared, Consultant agrees to share Project information with, and to fully cooperate with, those corporations, firms, contractors, public utilities, governmental entities, and persons involved in or associated with the Project. No information, news, or press releases related to the Project, whether made to representatives of newspapers, magazines, or television and radio stations, shall be made without the written authorization of the City's Project Manager.

Section 9. Duty to Inform

If, at any time during the performance of this Agreement or any future phase of this Agreement for which Consultant has been retained, Consultant becomes aware of actual or potential problems, faults, or defects in the Project or Scope of Services, or any portion thereof; or of any nonconformance with federal, state, or local laws, rules, or regulations; or if Consultant has any objection to any decision or order made by the City with respect to such laws, rules, or regulations, Consultant shall give prompt written notice thereof to the City's Project Manager. Any delay or failure on the part of the City to provide a written response to Consultant shall neither constitute agreement with nor acquiescence to Consultant's statement or claim, nor constitute a waiver of any of the City's rights.

Section 10. Subcontractors and Assignments

10.1. Some services may be performed by persons other than Consultant, provided that Consultant advises the City of the names of such subcontractors and the services which they intend to perform, and the City specifically agrees in writing to such subcontracting.

Consultant acknowledges such services will be provided to the City pursuant to a subcontract(s) between Consultant and subcontractor(s) and no privity of contract exists between the City and the subcontractor(s). The City has agreed to Consultant's use of Compass Land Surveyors and Iron Horse Group as subcontractors on this Project. Unless otherwise specifically provided by this Agreement, the City incurs no liability to third persons for payment of any compensation provided herein to Consultant. Any attempted assignment of this Agreement without the written consent of the City shall be void. Except as otherwise specifically agreed, all costs for services performed by others on behalf of Consultant shall not be subject to additional reimbursement by the City.

10.2. The City shall have the right to enter into other agreements for the Project, to be coordinated with this Agreement. Consultant shall cooperate with the City and other firms, engineers or subcontractors on the Project so that all portions of the Project may be completed in the least possible time and within normal working hours. Consultant shall furnish other engineers, subcontractors and affected public utilities, whose designs are fitted into Consultant's design, detail drawings giving full information so that conflicts can be avoided.

Section 11. Consultant Is Independent Contractor

11.1. Consultant is an independent contractor for all purposes and shall be entitled to no compensation other than the Compensation Amount provided for under **Section 3** of this Agreement. Consultant will be solely responsible for determining the manner and means of accomplishing the end result of Consultant's Services. The City does not have the right to control or interfere with the manner or method of accomplishing said Services. The City, however, will have the right to specify and control the results of Consultant's Services so such Services meet the requirements of the Project.

11.2. Consultant has requested that some consulting services be performed on the Project by persons or firms other than Consultant, through a subcontract with Consultant. Consultant acknowledges that if such services are provided to the City pursuant to a subcontract(s) between Consultant and those who provide such services, Consultant may not utilize any subcontractor(s), or in any way assign its responsibility under this Agreement, without first obtaining the express written consent of the City, which consent may be given or denied in the City's sole discretion. For all services performed under subcontract to Consultant, as approved by the City, Consultant shall only charge the compensation rates shown on an approved Rate Schedule. Rate Schedules for named or unnamed subcontractors, and Consultant markups of subcontractor billings, will only be recognized by the City as set forth in Consultant's Rate Schedule, unless documented and approved, in writing, by the City pursuant to a modification to Consultant's Rate Schedule, per **Section 16** of this Agreement. In all cases, processing and payment of billings from subcontractors is solely the responsibility of Consultant.

11.3. Consultant shall be responsible for, and defend, indemnify, and hold the City harmless against, any liability, cost, or damage arising out of Consultant's use of such subcontractor(s) and subcontractor's negligent acts, errors, or omissions. Unless otherwise agreed to, in writing, by the City, Consultant shall require that all of Consultant's

subcontractors also comply with and be subject to the provisions of this **Section 11** and meet the same insurance requirements of Consultant under this Agreement.

Section 12. Consultant Responsibilities

12.1. Consultant shall make prompt payment for any claims for labor, materials, or services furnished to Consultant by any person in connection with this Agreement, as such claims become due. Consultant shall not permit any liens or claims to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of Consultant. If Consultant fails, neglects, or refuses to make prompt payment of any such claim, the City may, but shall not be obligated to, pay such claim to the subcontractor furnishing the labor, materials, or services and offset the amount of the payment against funds due or to become due to Consultant under this Agreement. The City may also recover any such amounts directly from Consultant.

12.2. Consultant must comply with all applicable Oregon and federal wage and hour laws, including BOLI wage requirements, if applicable. Consultant shall make all required workers compensation and medical care payments on time. Consultant shall be fully responsible for payment of all employee withholdings required by law, including but not limited to taxes, including payroll, income, Social Security (FICA), and Medicaid. Consultant shall also be fully responsible for payment of salaries, benefits, taxes, Industrial Accident Fund contributions, and all other charges on account of any employees. Consultant shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. All costs incident to the hiring of assistants or employees shall be Consultant's responsibility. Consultant shall defend, indemnify, and hold the City harmless from claims for payment of all such expenses. Unless otherwise expressly set forth on **Exhibit C** as a reimbursable expense item not included in the Compensation Amount, specific costs associated with items set forth in this subsection shall be deemed as fully and conclusively included in the rate upon which Consultant's Compensation Amount is based.

12.3. No person shall be discriminated against by Consultant or any subcontractor in the performance of this Agreement on the basis of race, color, creed, religion, marital status, age, disability, sex, gender, sexual orientation, gender identity, or national origin. Any violation of this provision shall be grounds for cancellation, termination, or suspension of the Agreement, in whole or in part, by the City.

12.4. References to "subcontractor" mean a subcontractor at any tier.

Section 13. Indemnity and Insurance

13.1. Consultant acknowledges responsibility for liability arising out of the performance of this Agreement, and shall defend, indemnify, and hold the City harmless from any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Consultant's negligent acts, omissions, errors, or willful or reckless misconduct pursuant to this Agreement, or from Consultant's failure to perform its responsibilities as set forth in this Agreement. The review, approval, or acceptance

by the City, its Project Manager, or any City employee of documents or other Services performed, prepared, or submitted by Consultant shall not be considered a negligent act, error, omission, or willful misconduct on the part of the City, and none of the foregoing shall relieve Consultant of its responsibility to perform in full conformity with the City's requirements, as set forth in this Agreement, and to indemnify the City as provided above and to reimburse the City for any and all costs and damages suffered by the City as a result of Consultant's negligent performance of this Agreement, failure of performance hereunder, violation of state or federal laws, or failure to adhere to the standards of performance and care described in **Subsection 13.2**. Consultant shall defend the City (using legal counsel reasonably acceptable to the City) against any claim that alleges negligent acts, omissions, errors, or willful or reckless misconduct by Consultant.

13.2. Consultant's Standard of Care and Insurance Requirements.

13.2.1. Standard of Care: In the performance of professional services, Consultant agrees to use at least that degree of care and skill exercised under similar circumstances by reputable members of Consultant's profession practicing in the Portland metropolitan area. Consultant will re-perform any Services not meeting this standard without additional compensation. Consultant's re-performance of any Services, even if done at the City's request, shall not be considered as a limitation or waiver by the City of any other remedies or claims it may have arising out of Consultant's failure to perform in accordance with the applicable standard of care of this Agreement and within the prescribed timeframe.

13.2.2. Insurance Requirements: Consultant shall maintain insurance coverage acceptable to the City in full force and effect throughout the term of this Agreement. Such insurance shall cover all risks arising directly or indirectly out of Consultant's activities or work hereunder. The amount of insurance carried is in no way a limitation on Consultant's liability hereunder. The policy or policies of insurance maintained by Consultant shall provide at least the following minimum limits and coverages at all times during performance under this Agreement:

13.2.2.1. Commercial General Liability Insurance. Consultant shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, comprehensive Commercial General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

13.2.2.2. Professional Errors and Omissions Coverage. Consultant agrees to carry Professional Errors and Omissions Liability insurance on a policy form appropriate to the professionals providing the Services hereunder with a limit of no less than **\$2,000,000** per claim. Consultant shall maintain this insurance for damages alleged to be as a result of errors, omissions, or negligent acts of Consultant. Such policy shall have a retroactive date effective before the commencement of any work by Consultant on the Services covered by this Agreement, and coverage will remain in force for a period of at least three (3) years thereafter.

13.2.2.3. Business Automobile Liability Insurance. If Consultant will be using a motor vehicle in the performance of the Services herein, Consultant shall provide the City a certificate indicating that Consultant has business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

13.2.2.4. Workers Compensation Insurance. Consultant and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Consultants who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

13.2.2.5. Insurance Carrier Rating. Coverages provided by Consultant must be underwritten by an insurance company deemed acceptable by the City with an AM Best Rating of A or better. The City reserves the right to reject all or any insurance carrier(s) with a financial rating that is unacceptable to the City.

13.2.2.6. Additional Insured and Termination Endorsements. Additional Insured coverage under Consultant's Commercial General Liability, Automobile Liability, and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Additional insured coverage shall be for both on-going operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO form CG 2404 or its equivalent shall be provided. The following is included as additional insured: The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers. An endorsement shall also be provided requiring the insurance carrier to give the City at least thirty (30) days' written notification of

any termination or major modification of the insurance policies required hereunder.

13.2.2.7. Certificates of Insurance. As evidence of the insurance coverage required by this Agreement, Consultant shall furnish a Certificate of Insurance to the City. This Agreement shall not be effective until the required certificates and the Additional Insured Endorsements have been received and approved by the City. Consultant agrees that it will not terminate or change its coverage during the term of this Agreement without giving the City at least thirty (30) days' prior advance notice and Consultant will obtain an endorsement from its insurance carrier, in favor of the City, requiring the carrier to notify the City of any termination or change in insurance coverage, as provided above.

13.3. The coverage provided by these policies shall be primary, and any other insurance carried by the City is excess. Consultant shall be responsible for any deductible amounts payable under all policies of insurance. If insurance policies are "Claims Made" policies, Consultant will be required to maintain such policies in full force and effect throughout any warranty period.

Section 14. Early Termination; Default

14.1. This Agreement may be terminated prior to the expiration of the agreed upon terms:

14.1.1. By mutual written consent of the parties;

14.1.2. By the City, for any reason, and within its sole discretion, effective upon delivery of written notice to Consultant by mail or in person; and

14.1.3. By Consultant, effective upon seven (7) days' prior written notice in the event of substantial failure by the City to perform in accordance with the terms through no fault of Consultant, where such default is not cured within the seven (7) day period by the City. Withholding of disputed payment is not a default by the City.

14.2. If the City terminates this Agreement, in whole or in part, due to default or failure of Consultant to perform Services in accordance with the Agreement, the City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, both at law and in equity, for breach of contract, Consultant shall be liable for all costs and damages incurred by the City as a result of the default by Consultant, including, but not limited to all costs incurred by the City in procuring services from others as needed to complete this Agreement. This Agreement shall be in full force to the extent not terminated by written notice from the City to Consultant. In the event of a default, the City will provide Consultant with written notice of the default and a period of ten (10) days to cure the default. If Consultant notifies the City that it wishes to cure the default but cannot, in good faith, do so within the ten (10) day cure period provided, then the City may elect, in its sole discretion, to extend the cure period to an agreed upon time

period, or the City may elect to terminate this Agreement and seek remedies for the default, as provided above.

14.3. If the City terminates this Agreement for its own convenience not due to any default by Consultant, payment of Consultant shall be prorated to, and include the day of, termination and shall be in full satisfaction of all claims by Consultant against the City under this Agreement.

14.4. Termination under any provision of this section shall not affect any right, obligation, or liability of Consultant or the City that accrued prior to such termination. Consultant shall surrender to the City items of work or portions thereof, referred to in **Section 18**, for which Consultant has received payment or the City has made payment. The City retains the right to elect whether or not to proceed with actual construction of the Project.

Section 15. Suspension of Services

The City may suspend, delay, or interrupt all or any part of the Services for such time as the City deems appropriate for its own convenience by giving written notice thereof to Consultant. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within Consultant's control. The City shall not be responsible for Services performed by any subcontractors after notice of suspension is given by the City to Consultant. Should the City suspend, delay, or interrupt the Services and the suspension is not within Consultant's control, then the City shall extend the time of completion by the length of the delay.

Section 16. Modification/Change Orders

Any modification of the provisions of this Agreement shall not be enforceable unless reduced to writing and signed by both the City and Consultant. A modification is a written document, contemporaneously executed by the City and Consultant, which increases or decreases the cost to the City over the agreed Compensation Amount in **Section 3** of this Agreement, or changes or modifies the Scope of Services or the time for performance. No modification shall be binding or effective until executed, in writing, by both Consultant and the City. In the event Consultant receives any communication of whatsoever nature from the City, which communication Consultant contends gives rise to any modification of this Agreement, Consultant shall, within five (5) days after receipt, make a written request for modification to the City's Project Manager in the form of a Change Order. Consultant's failure to submit such written request for modification in the form of a Change Order shall be the basis for refusal by the City to treat said communication as a basis for modification or to allow such modification. In connection with any modification to this Agreement affecting any change in price, Consultant shall submit a complete breakdown of labor, material, equipment, and other costs. If Consultant incurs additional costs or devotes additional time on Project tasks, the City shall be responsible for payment of only those additional costs for which it has agreed to pay under a signed Change Order. To be enforceable, the Change Order must describe with particularity the nature of the change, any delay in time the Change Order will cause, or any increase or

decrease in the Compensation Amount. The Change Order must be signed and dated by both Consultant and the City before the Change Order may be implemented.

Section 17. Access to Records

The City shall have access, upon request, to such books, documents, receipts, papers, and records of Consultant as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years, unless within that time the City specifically requests an extension. This clause shall survive the expiration, completion, or termination of this Agreement.

Section 18. Property of the City

18.1. Originals or certified copies of the original work forms, including but not limited to documents, drawings, tracings, surveying records, mylars, papers, diaries, inspection reports, and photographs, performed or produced by Consultant under this Agreement shall be the exclusive property of the City and shall be delivered to the City prior to final payment. Any statutory or common law rights to such property held by Consultant as creator of such work shall be conveyed to the City upon request without additional compensation. Upon the City's approval, and provided the City is identified in connection therewith, Consultant may include Consultant's work in its promotional materials. Drawings may bear a disclaimer releasing Consultant from any liability for changes made on the original drawings and for reuse of the drawings subsequent to the date they are turned over to the City.

18.2. Consultant shall not be held liable for any damage, loss, increased expenses, or otherwise, caused by or attributed to the reuse by the City or its designees of all work performed by Consultant pursuant to this Agreement without the express written permission of Consultant.

Section 19. Notices

Any notice required or permitted under this Agreement shall be in writing and shall be given when actually delivered in person or forty-eight (48) hours after having been deposited in the United States mail as certified or registered mail, addressed to the addresses set forth below, or to such other address as one party may indicate by written notice to the other party.

To City: City of Wilsonville
Attn: Zach Weigel
29799 SW Town Center Loop East
Wilsonville, OR 97070

To Consultant: Wallis Engineering, PLLC, LLC
Attn: Adam Crafts
215 W 4th Street, Suite 200
Vancouver, WA 98660

Section 20. Miscellaneous Provisions

20.1. Integration. This Agreement, including all exhibits attached hereto, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations, or agreements. In case of conflict among these documents, the provisions of this Agreement shall control.

20.2. Legal Effect and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. This Agreement may be enforced by an action at law or in equity.

20.3. No Assignment. Consultant may not assign this Agreement, nor the performance of any obligations hereunder, unless agreed to in advance and in writing by the City.

20.4. Adherence to Law. In the performance of this Agreement, Consultant shall adhere to all applicable federal, state, and local laws (including the Wilsonville Code and Public Works Standards), including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers compensation, and minimum and prevailing wage requirements. Any certificates, licenses, or permits that Consultant is required by law to obtain or maintain in order to perform the Services described on **Exhibit A**, shall be obtained and maintained throughout the term of this Agreement.

20.5. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. All contractual provisions required by ORS Chapters 279A and 279C to be included in public agreements are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth herein.

20.6. Jurisdiction. Venue for any dispute will be in Clackamas County Circuit Court.

20.7. Legal Action/Attorney Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at trial or on any appeal or review, in addition to all other amounts provided by law. If the City is required to seek legal assistance to enforce any term of this Agreement, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

20.8. Nonwaiver. Failure by either party at any time to require performance by the other party of any of the provisions of this Agreement shall in no way affect the party's rights hereunder to enforce the same, nor shall any waiver by the party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this nonwaiver clause.

20.9. Severability. If any provision of this Agreement is found to be void or unenforceable to any extent, it is the intent of the parties that the rest of the Agreement shall remain in full force and effect, to the greatest extent allowed by law.

20.10. Modification. This Agreement may not be modified except by written instrument executed by Consultant and the City.

20.11. Time of the Essence. Time is expressly made of the essence in the performance of this Agreement.

20.12. Calculation of Time. Except where the reference is to business days, all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the City, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday. Where the reference is to business days, periods of time referred to herein shall exclude Saturdays, Sundays, and legal holidays observed by the City. Whenever a time period is set forth in days in this Agreement, the first day from which the designated period of time begins to run shall not be included.

20.13. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

20.14. Number, Gender and Captions. In construing this Agreement, it is understood that, if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that, generally, all grammatical changes shall be made, assumed, and implied to individuals and/or corporations and partnerships. All captions and paragraph headings used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Agreement.

20.15. Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of where this Agreement gives the City “sole discretion” or the City is allowed to make a decision in its “sole judgment.”

20.16. Other Necessary Acts. Each party shall execute and deliver to the other all such further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other parties the full and complete enjoyment of rights and privileges hereunder.

20.17. Interpretation. As a further condition of this Agreement, the City and Consultant acknowledge that this Agreement shall be deemed and construed to have been prepared mutually by each party and it shall be expressly agreed that any uncertainty or

ambiguity existing therein shall not be construed against any party. In the event that any party shall take an action, whether judicial or otherwise, to enforce or interpret any of the terms of the Agreement, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in taking such action, including attorney fees and costs, whether incurred in a court of law or otherwise.

20.18. Entire Agreement. This Agreement and all documents attached to this Agreement represent the entire agreement between the parties.

20.19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement but all of which together shall constitute one and the same instrument.

20.20. Authority. Each party signing on behalf of Consultant and the City hereby warrants actual authority to bind their respective party.

The Consultant and the City hereby agree to all provisions of this Agreement.

CONSULTANT:

CITY:

WALLIS ENGINEERING, PLLC, LLC

CITY OF WILSONVILLE

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Employer I.D. No. _____

APPROVED AS TO FORM:

ATTESTED TO:

Barbara A. Jacobson, Assistant City Attorney
City of Wilsonville, Oregon

Sandra C. King, MMC, City Recorder
City of Wilsonville, Oregon

**WALLIS ENGINEERING
EXHIBIT A – SCOPE OF WORK**

**Charbonneau High Priority Utility Repair, Project #2500 & 7500
June 23, 2015**

WE #1402A

GENERAL SCOPE OF PROJECT

In 2014, the City of Wilsonville completed an extensive assessment of the Charbonneau District infrastructure, including the sewer, storm, water, and street utilities. Much of the utility infrastructure has been identified as deficient and is in need of repair and/or replacement. The Charbonneau Consolidated Improvement Plan (Plan) identified 15 high priority storm and sanitary sewers improvements in various areas of the District, which the City intends to complete over the next three years. This scope of work includes preliminary design, preparation of three separate contract documents, and construction phase services for these areas. Wallis Engineering (Consultant) will carry out the tasks associated with the anticipated milestones and detailed scope of work as discussed below.

Project Milestones

The anticipated project milestones are as follows:

1. Consultant Notice to Proceed	July 2015
2. Draft Preliminary Design and Project Grouping	October 2015
3. Public Open House	November 2015
4. Final Grouping and 90% Design	January 2016
5. Final Design and Bidding Assistance – Project #1	March 2016
6. Construction Support – Project #1	August 2016
7. Final Design and Bidding Assistance – Project #2	March 2017
8. Construction Support – Project #2	August 2017
9. Final Design and Bidding Assistance – Project #3	December 2017
10. Construction Support – Project #3	June 2018

The anticipated contract completion date is June 30, 2018.

SPECIFIC SCOPE OF WORK

The projects will be completed with the following tasks and their associated subtasks:

Task 1	Project Management and Administration
Task 2	Preliminary Design, Public Involvement and Phasing
Task 3	Final Design and Bidding Assistance – Projects #1
Task 4	Construction Support – Projects #1
Task 5	Final Design and Bidding Assistance – Projects #2
Task 6	Construction Support – Projects #2

Task 7 Final Design and Bidding Assistance – Projects #3

Task 8 Construction Support – Projects #3

Projects #1-3 discussed in this scope will be made up of SR-1 through SR-15 as listed in the Charbonneau High Priority Utility Repair Project Information sheet, originally presented in Attachment B of the RFQ request. This list is attached to this scope of work.

The attached list of locations and existing and proposed lengths will be evaluated by the consultant with input from the public through a public open house as discussed in Subtask 2.8, and divided into three separate project groupings that will make up Projects #1-3. Any location not on this list will be considered to be out-of-scope and will require a supplemental scope of work before evaluation of the location by the consultant.

Task 1 Project Management and Administration

Task 1 Objective. Provide project management and administration for work associated with each project. This task includes technical and financial management for the project.

Task 1 Approach:

- 1.1 Project Kick-Off Meeting.** The consultant will meet with City Staff and stakeholders' representatives to introduce the project, identify contacts and roles, discuss objectives, and decision points. An agenda and meeting summary will be provided.
- 1.2 Project management and coordination.** The consultant will provide comprehensive project management to ensure the scope, schedule and budget are met.
 - 1.2.1** Provide a point of contact person for the City while coordinating with the project team.
 - 1.2.2** Provide maintenance of a comprehensive schedule which will include individual task milestones and duration.
 - 1.2.3** Monthly progress reports will be submitted with invoices. Monthly progress reports will include task level budget status and schedule status. Billings will be invoiced by task and will include staff classification, hourly rate, and hours charged to the project.

Task 1 Assumption:

- The contract spans a 36 month period.
- Two hours per month is allotted to work described under Task 1.2.

Task 1 Deliverables:

- Monthly progress reports will be submitted with invoices
- Kickoff Meeting Agenda and Minutes
- Updated Schedule, as needed

Task 2 Preliminary Design, Public Involvement and Phasing

Task 2 Objective. Complete data collection, preliminary design of improvements, public outreach, and phasing plan for proposed improvements.

2.1 Review Existing Data. Review available background information relating to this project. The anticipated information, provided by the City in electronic format, includes:

- City of Wilsonville 2014 Public Works Standards and detail drawings
- Charbonneau Consolidated Improvement Plan
- Asbuilt record drawing information, as available
- Other pertinent information requested by the Consultant, as available

2.2 Public Information Materials. The Consultant will prepare presentation boards, comment forms, and a presentation for one public open house after the draft 60% design review comments have been issued by the City. The open house will provide the opportunity for the public to submit feedback on proposed groupings of repair locations into separate construction packages, which will then be used to determine the final grouping.

Subtask 2.2 Assumptions:

- City staff will schedule and host the meeting.
- Presentation materials will utilize content and graphics produced under other tasks.

Subtask 2.2 Deliverables:

- Public Open House meeting materials to include meeting agenda, 34” by 72” graphic boards displaying each of the three project areas mounted to foam core boards plus two additional boards as needed (5 total), double-sided 11” by 17” folded informational handouts (100 copies), project presentation in PowerPoint format, and public comment sheets (100 copies). Draft materials will be provided 5 business days in advance of the meeting.

2.3 Public Open House. The Consultant present the public information materials prepared under Task 2.2 and provide written responses to the comments to the City. with by the meeting attendees. The event will be scheduled and hosted by others. The Consultant will document submitted comments, provide written responses to comments, and will provide copies of these responses to the City.

Subtask 2.3 Assumptions:

- The City will be responsible for securing and organizing the meeting venue
- The City will provide public notification of the event.
- The City will respond directly to the public using the written responses by the consultant.

Subtask 2.3 Deliverables:

- Written summary of meeting, including copies of submitted comment cards, documentation of comments submitted and written response to submitted comments

2.4 Pipeline Video Inspection & Connection Verification.

2.4.1 Pre video Inspection Meeting. The Consultant and subconsultant Iron Horse will attend a pipeline video inspection and connection verification scoping meeting with the City to discuss the process by which pipeline lateral connections and the associated property or structure being serviced will be determined.

2.4.2 Mainline Cleaning and Video Inspection. Iron Horse will conduct a video inspection of each section of storm and sanitary sewer mains within the project area. Prior to video inspection, the Iron Horse will clean each section of pipeline to be video inspected in accordance with Wilsonville Public Works Standards (Section 401.6.02.a).

2.4.3 Sanitary and Storm Lateral Locate and Video Inspection. Iron Horse will video inspect and locate each sanitary sewer and storm lateral to the row or a minimum of 20 feet beyond the edge of pavement or curb. Markers will be installed at lateral connections and at the termination of the lateral inspection. Each lateral marker will be labeled, photographed, and surveyed.

2.4.4 Post Video Inspection Meeting. The Consultant and subconsultant Iron Horse will attend a pipeline video inspection and connection verification summary meeting to discuss the extents of the CCTV inspection work that was collected and clarify where the additional investigation needs to be collected by the City.

Subtask 2.4 Assumptions:

- Up to 8,800 LF of mainline inspection and cleaning is assumed.
- Up to 48 sanitary laterals and 60 storm laterals will be located and inspected.
- 8 days of traffic control set up included.
- 5 disposal dump fees included.
- The video inspection will be conducted in accordance with Wilsonville Public Works Standards (Section 401.6.02.d).
- Up to three passes with a high pressure jetter will be sufficient. If additional cleaning is required, the City will be notified.
- The City will provide a map with manhole and inlet numbers that will be used to identify structures in the report.
- The City will investigate status of unidentified or unassigned connections by performing service lateral locates, smoke testing, dye testing and potholing where necessary.
- Laterals that are obstructed by roots, pipe collapse, debris, or capped will be inspected to the extent possible.
- Meetings will be held at Wilsonville City Hall and City Staff will be responsible for providing the meeting room.

Subtask 2.4 Deliverables:

- Technical memorandum documenting the process by which pipeline lateral connections and the associated property or structure being serviced is determined
- Video inspection recorded in color DVD format and written inspection report for each section of utility pipeline
- Preliminary layout of all utility pipeline connections, identifying each property or structure served, including identification of connections abandoned, capped, or laterals requiring further investigation. To be updated as the status of unidentified or unassigned connections are determined by the City
- Agenda and meeting materials will be provided two (2) days prior to meeting date for Pipeline Inspection & Connection Verification Scoping and Summary Meetings

- Meeting minutes for Pipeline Inspection & Connection Verification Scoping and Summary Meetings

2.5 Topographic Surveying. The Consultant will perform topographic surveying services for design of each of the fifteen (15) high priority utility repair locations. The description of work and estimated cost for each area is described in the attached Description of Survey Work prepared by Compass Land Surveyors.

2.5.1 Topographic Survey

At a minimum, surveying services will include the following:

- 1) Establishing a horizontal and vertical survey control network
- 2) Reference the network and all mapping to City of Wilsonville approved vertical datum, NAVD 88 Datum.
- 3) Surveying and preparing a map showing the following:
 - a. Locations, rim elevations, and pipe invert elevations for all sanitary and storm structures within the project area. For water valves and meters, provide the location, box rim elevation, and top of valve nut elevation.
 - b. Utility poles, meters, and overhead wires, including heights
 - c. Located underground public utilities based on tone marks and irrigation systems
 - d. Edge of pavement and top face of curb
 - e. Fences, mailboxes, street lights, and trees
 - f. Striping and signage
 - g. Sidewalk, curb ramps, and driveways
 - h. Right of way and property boundary monuments where found
- 4) Survey data will be compiled in digital format and a digital terrain model will be created which can be used for design purposes.

Sub-subtask 2.5.1 Assumptions:

- The survey will include each project in a single CAD file.
- The City will obtain right-of-entry as needed for survey.
- GIS provided by the City will be used to show the approximate right-of-way, aligned with any property monuments found.
- Survey will be limited to 15 feet beyond the edge of pavement or curb line with the sanitary sewer project areas and 5 feet beyond for storm sewer project areas.

Sub-subtask 2.5.1 Deliverables:

- The Consultant will provide a digital terrain model in AutoCad format complete with all external references such that the DTM is fully usable by the City without additional software or reference data.

2.5.2 Easement Exhibits

Compass Land Survey will prepare easement exhibits for two properties as described in the attached Description of Survey Work.

Sub-subtask 2.5.2 Deliverables:

- Easement exhibit documents will be prepared for two properties.

Sub-subtask 2.5.1 Assumptions:

- City will provide title reports for easement properties and research private road easements.
- City will prepare easement documents, negotiate easements, and file easements.

2.6 Condition Assessment and Improvement Alternatives. The Consultant will perform a condition assessment and evaluate replacement or rehabilitation alternatives.

2.6.1 Existing Conditions Summary. Storm and sanitary sewer main conditions will be summarized in an Existing Conditions Map. Such a map will be prepared for each project area and will graphically show the following features:

- The existing sanitary and storm sewer horizontal alignment and slope.
- Sewer lateral horizontal alignments to the right of way
- Pipe deficiencies that may require correction prior to internal rehabilitation, which may include offset joints exceeding one inch, broken or collapsed pipe, heavy grease, heavy infiltration, heavy roots, protruding taps, and sags exceeding 25% of the pipe diameter and 1” in depth.
- Other existing utilities located within the project area
- Aerial background

2.6.2 Lateral Sewer and Manhole Conditions. Video inspection reports and video will be reviewed for the sanitary and storm lateral conditions. Surface inspection for manholes will be completed and documented, noting structural deficiencies, observed infiltration, or hydrogen sulfide corrosion. Lateral and manhole conditions will be summarized in a table, but will not be shown graphically.

2.6.3 Alternatives Analysis. Alternative construction methods for rehabilitation or replacement of the existing sewer mains and laterals will be evaluated to determine which method or methods may be preferred. It is anticipated that cured-in-place pipe rehabilitation, pipe bursting, and open excavation methods will be examined. This analysis will consider the ability to remove unacceptable deficiencies, impacts to traffic, impacts to adjacent utilities, construction feasibility, duration of work, need for bypass pumping, need for dewatering, and cost. Alternative horizontal alignments for the proposed sewer will also be considered. An alternatives analysis memorandum will be prepared summarizing the recommended improvements for each area for City review and outlining the design criteria for the improvements. A final memorandum will be prepared that incorporates the City’s input.

Subtask 2.6 Assumptions:

- Evaluation of hydraulic capacity and soil conditions are not included in this scope of work.
- The City will be notified if further analysis or investigations are recommended.

Subtask 2.6 Deliverables:

- Existing Conditions Maps, 15 assumed
- Sanitary Lateral and Manhole Condition Summary, up to 46 sanitary laterals and 60 storm laterals assumed.
- Draft and Final Alternative Analysis Memorandum

2.7 Preliminary (60%) Design Documents. The Consultant will prepare a complete set of preliminary (60%) design plans and cost estimate for the fifteen (15) high priority utility repair locations. The preliminary plan set must include the following:

- 1) Sanitary Bypass Plan – 5 sheets
- 2) Sanitary Plan and Profile – 6 sheets
- 3) Storm Drainage Plan and Profile – 28 sheets
- 4) Construction Details – up to 4 sheets

Subtask 2.7 Assumptions:

- Plans and profile drawings will be scaled full size at 1"=20' H and 1"=5' V.
- Plan and profile sheets will be combined if space allows.
- City will provide a log of all preliminary (60%) plan review comments.
- The Consultant will update comment log by providing a response to each comment and submit with the Construction Phasing Technical Memorandum (Task 1.7).
- 60% plan review meeting will be held prior to submission of construction phasing plan.
- Meetings will be held at Wilsonville City Hall and City Staff will be responsible for providing the meeting room.

Subtask 2.7 Deliverables:

- Preliminary (60%) design plan set in half-size (11"x17") electronic (PDF) format
- Preliminary (60%) Engineer's construction cost estimate
- Agenda and meeting materials two (2) business days prior to meeting date for 60% plan review meeting.
- Meeting minutes for 60% plan review meeting.

2.8 Construction Phasing Plan. The Consultant will recommend a grouping of the fifteen (15) high priority utility repair locations into three (3) construction packages. The Consultant will submit recommended grouping to City for review and will update recommended grouping based on City comments to be included as part of the Public Open House (Subtask 2.3). Final recommended grouping will be based on comments from the Public Open House and City.

Subtask 2.8 Assumptions:

- The projects will be grouped by similar construction method and prioritized to completed open excavation work before trenchless rehabilitation work.
- The City will provide target construction cost limits to assist with grouping of projects.
- The phasing plan will be presented at the open house to incorporate feedback prior to finalizing.

Subtask 2.8 Deliverable:

- Draft and final technical memorandum identifying the scope of the three (3) construction packages and discussing the methodology for grouping the fifteen (15) high priority utility repair locations.

2.9 Advance (90%) Design Documents. The Consultant will prepare a complete set of advance (90%) design plans and cost estimate for each of the three (3) construction packages. In addition to the plan sheets from the preliminary plan set (Subtask 2.7), the advance (90%) plan set for each of the sets will include the following:

- 1) Cover Sheet
- 2) General Notes, Legend and Abbreviations
- 3) Erosion and Sediment Control Standards and Details
- 4) Erosion Control and Site Preparation Plan(s)
- 5) Bypass Pumping Plan(s) – up to 5 sheets total
- 6) Storm Sewer Plan and Profile Sheet(s) – up to 28 sheets total
- 7) Sanitary Sewer Plan and Profile Sheets (s) – up to 6 total
- 8) Temporary Protection and Direction of Traffic (as needed)
- 9) Signing & Striping (as needed)
- 10) Minor Landscape Restoration Plan (as needed and not prepared by Landscape Architect)
- 11) Project Specific Details - up to 4 sheets total
- 12) City of Wilsonville Standard Details
- 13) ODOT Standard Traffic Control Plans

Contract specifications will be prepared using the City's front end contract documents and ODOT's standard specifications as amended with City General Special Provisions and project specific special provisions.

City will add advance (90%) plan review comments to comment log. The Consultant will update comment log by providing a response to each comment and submit with final construction documents.

Subtask 2.9 Assumptions:

- City will prepare front end contract specifications.
- The Consultant will prepare Project Special Provisions for Project #1 based on ODOT 2015 Standard Specifications and the City's current General Special Provisions.
- City will provide standard Wilsonville Special Provisions for inclusion in the project special provisions in MS Word format. These incorporate all relevant specifications from the City's 2014 Public Works Standards GSP.
- City will add advance (90%) plan review comments to comment log.

Subtask 2.9 Deliverables:

- Preliminary (60%) comment log with the Consultant's responses to each comment
- Advance (90%) design plan set for each construction package in half-size (11"x17") electronic (PDF) format

- Advance (90%) project special provisions for Project #1
- Advance (90%) bid schedule and bid item descriptions for Project #1
- Advance (90%) Engineer's construction cost estimate for each construction package

Task 3 Final Design and Bidding Assistance – Project #1

Task 3 Objective. To provide final design and bidding assistance in the completion of the Project for the City.

3.1 Final Design Meeting. The Consultant will schedule, facilitate, and prepare agendas, meeting materials, and minutes for final design meeting after receipt of City advance (90%) review comments.

Subtask 3.1 Assumptions:

- Meetings will be held at Wilsonville City Hall.
- City Staff will be responsible for providing the meeting room.

Subtask 3.1 Deliverables:

- Project Team Meeting agendas and meeting materials two (2) business days prior to meeting date
- Project Team Meeting minutes

3.2 Final Design Documents. The Consultant will prepare a complete set of final design plans, project special provisions, and cost estimate for the Project.

Subtask 3.2 Assumptions:

- The final documents will address the City's 90% review comments.
- Project areas will not be changed from the 90% submittal.

Subtask 3.2 Deliverables:

- Updated comment log with the Consultant's responses to each comment
- Final engineering plan set for Project #1 in both full size (22"x34") and half-size (11"x17") electronic (PDF) format digitally stamped and signed by a Professional Engineer registered in the State of Oregon
- Final project special provisions for Project #1 in digital format
- Final bid schedule for Project #1 in digital format
- Final engineer's construction cost estimate for Project #1

3.3 Bidding Assistance. The Consultant will coordinate with City in the preparation of construction bid documents for Project #1. The Consultant will prepare response to potential construction contractor and supplier technical questions about the plans and specifications at the request of the City and will review all addenda necessary to clarify the construction bid documents.

Subtask 3.3 Assumption:

- The City will prepare, print, and distribute construction bid documents and be the main point of contact for all bidders during the bidding process.

Subtask 3.3 Deliverables

- Written response addressing technical questions during bidding process, as needed
- Construction bid document addenda review comments, as needed

Task 4 Construction Support – Project #1

Task 4 Objective. To provide construction and post-construction engineering support services in the completion of this Project for the City.

4.1 Preconstruction Services. The Consultant will attend the preconstruction meeting and provide technical review of submittals as requested by the City.

Subtask 4.1 Assumptions:

- City will provide primary inspection and construction management services.
- City will schedule, facilitate, and prepare meeting materials for the pre-construction meeting.
- The Consultant will complete up to 5 construction submittal reviews.

Subtask 4.1 Deliverables:

- Material submittal, RFI, COR review comments, as needed

4.2 Construction Engineering Services. The consultant will provide on-going construction engineering services to assist the City during construction. This may include attendance at a weekly meeting and or site visit, technical review Request for Information (RFI), and Change Order Requests (COR), and progress payment quantities. The consultant will also assist with a final inspection and review of a construction punch list.

An allotment for construction engineering and administration services has been included in the attached fee estimate and is based on an assumed 12 week on-site construction period. The allotment includes 6 hours per week for the project manager and 8 hours per week for the project engineer.

Subtask 4.2 Assumptions:

- Construction period will be 12 weeks or less.
- The Contractor will provide all construction staking and quality control testing.

Subtask 4.2 Deliverables:

- Weekly Project Meeting agendas two (2) business days prior to meeting date
- Weekly Project Meeting minutes
- Technical reviews as described above

4.3 Record Drawings. The Consultant will provide a topographic survey of the constructed improvements based on City of Wilsonville approved vertical datum, NAVD 88 Datum, including:

- 1) Locations, rim elevations, and pipe invert elevations for all constructed sanitary and storm structures within the project area
- 2) Location of sanitary and storm service lateral connections to mainline and existing service pipe

The Consultant will prepare a complete set of record drawings that reflect all changes made to the design during construction. Record drawings will include the “asbuilt” sanitary and storm service lateral invert elevation at the point of connection to the existing service lateral pipe. The preliminary asbuilt plan set will be used to conduct the punch list walkthrough.

Subtask 4.3 Assumptions:

- Record drawings will be based on the asbuilt survey and red-lined asbuilt drawings prepared by the contractor and review by the City.
- The City will sign off on the accuracy of the contractor’s redline drawings.
- Total fees from Compass Land Survey are evenly divided across the three projects. Actual fee will be based on actual projects included with each group.

Subtask 4.3 Deliverables:

- Preliminary asbuilt plan set in printed, full size (22”x34”) paper, 3 copies
- Final asbuilt plan set in both full size (22”x34”) and half-size (11”x17”) electronic (PDF) format, digitally stamped and signed by a Professional Engineer registered in the State of Oregon
- Final asbuilt plan set on full size (22”x34”) Mylar (min. 3-mil) stamped and signed by a Professional Engineer registered in the State of Oregon
- AutoCad copy, current version, final asbuilt plan set and asbuilt topographic survey

4.4 Monument Record of Survey (Contingency Task). Compass Land Survey’s preliminary search identified eight project areas that have recorded centerline monuments. This task includes preparing a Pre and Post Construction Record of Survey to record and reestablish any monuments that are disturbed from the construction. For budget purposes, it is assumed that half of these areas may need monument record of survey and should be noted that the scope of this task will be based on the actual number of surveys needed when identified at the 90% design stage.

Subtask 4.4 Assumptions:

- Contingency task that would not be used unless specifically authorized by the City.
- Total fees from Compass Land Survey are evenly divided across the three projects. Actual fee will be based on actual projects included with each group.

Subtask 4.4 Deliverables:

- Up to eight records of survey and filing fees are included.

4.5 Post-construction Review Meeting. Meet with City to discuss construction project and identify changes to plan details or specifications for the next project.

Subtask 4.5 Assumptions:

- One meeting with City staff and phone conversation with contractor if needed.

Subtask 4.5 Deliverables:

- Meeting summary and list of recommended changes

Task 5 Final Design and Bidding Assistance – Project #2

Subtasks, assumptions and deliverables are the same as those in Task 3, Project #1

Task 6 Construction Support – Project #2

Subtasks, assumptions and deliverables are the same as those in Task 4, Project #1

Task 7 Final Design and Bidding Assistance – Project #3

Subtasks, assumptions and deliverables are the same as those in Task 3, Project #1

Task 8 Construction Support – Project #3

Subtasks, assumptions and deliverables are the same as those in Task 4, Project #1

Utility	Existing Size / Width (in / ft)	Existing Length (ft)	Proposed Size / Width (in / ft)	Proposed Length (ft)
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#SR-1 - 8000 Block of Fairway Drive

Fairway Drive				
Sewer	8	300	8	300
Storm	12	530	12	530

#SR-2 - Estates Post Road

Estates Post Road				
Sewer	8	240	8	240
Storm	10	200	12	200

Storm Easement				
Storm	10	140	12	140

#SR-3 - Mollala Bend SE

Mollala Bend SE				
Sewer	8	150	8	150
Storm	12	170	12	170

#SR-4 - French Prairie Dr. Near Del Monte Dr.

French Prairie Drive				
Sewer	10	505	10	505

Del Monte Drive				
Sewer	8	235	8	235

#SR-5 - 7300 & 7800 Block of Fairway Drive

Fairway Drive				
Storm	18	260	18	260
	15	270	15	270
	12	165	12	165

Storm Easement West				
Storm	12	170	12	170

#SR-6 - Armitage Road South

Armitage Road				
Storm	18	465	18	465

#SR-7 - Middle Greens Road

Middle Greens Road				
Storm	15	255	15	255

Lake Point Court (East)				
Storm	12	310	12	310

#SR-8 - Country View Loop

Country View Loop				
Storm	15	180	15	180

Country View Lane				
Storm	12	290	12	290

#SR-9 - Boones Bend Road

Boones Bend Road				
Storm	12	350	12	350

Winchester Way				
Storm	18	115	18	115

Utility	Existing Size / Width (in / ft)	Existing Length (ft)	Proposed Size / Width (in / ft)	Proposed Length (ft)
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#SR-10 - Arbor Lake Drive

Arbor Lake Drive				
Storm	12	320	12	320

Downs Post Road				
Storm	12	255	12	255

Bunker Post Court				
Storm	10	165	12	165

Arbor Lake Court				
Storm	12	215	12	215

#SR-11 - Armitage Road - North

Armitage Road				
Storm	12	230	12	230
	10	420	12	420

#SR-12 - Lake Drive

Lake Drive				
Storm	15	120	15	120
	12	200	12	200

#SR-13 - Country View Lane

Country View Lane				
Storm	12	690	12	690

#SR-14 - Juliette Drive

Juliette Drive				
Storm	12	330	12	330

Boones Bend Road				
Storm	30	225	30	225

#SR-15 - Louvonne Drive

Juliette Drive				
Storm	12	145	12	145

Boones Bend Road				
Storm	15	165	15	165

**CITY OF WILSONVILLE - CHARBONNEAU SANITARY
AND STORM SEWER IMPROVEMENTS PROJECT (WE#14025A)**

General Scope of Survey Services and Deliverables

Professional surveying services for research, field surveying, calculating and drafting to prepare a single AutoCad drawing, electronic format, showing the required features (per RFP Task 1.5 and as discussed in the kickoff meeting on June 15) for each of the 15 high priority utility repair locations. The final drawing coordinate base will be Oregon Coordinate Reference System Portland Zone for horizontal positions and NAVD'88 for elevations with all sites being located relative to this coordinate base. Services to be provided are broken into the following items but will vary from location to location:

- Topographic mapping
- Asbuilt survey
- Preparation of Easement Exhibit Documents
- Pre-Construction Record of Survey
- Post-Construction Record of Survey

Assumptions:

- Access to edges of golf course may be necessary to obtain GPS positioning of control of intermediate control points and it is assumed that this access will be obtained by the city.
- Right of way and property line locations will be depicted only in those areas where adequate monumentation is recovered.
- Construction improvements related to this project are anticipated to be limited to the travelled roadway between the existing curbs except in the two areas where improvements are planned along a property line on Sites 2 and 5.
- Limits of project sites will be marked by others prior to public utility locates and start of fieldwork.
- Anticipated scope of services needed for each site are based upon current information received from the client as well as preliminary survey records research and review. No site visit has been performed.
- Should a Pre-Construction Record of Survey be filed for any site and no monuments be disturbed during subsequent construction, a Post Construction Record of Survey would not be required. A Letter of findings in lieu of a Post Construction Record of Survey would be required by the county surveyor instead.
- Notification and Right of Entry to all affected property owners of the survey work will be performed by the City prior to the start of any survey work.
- It is assumed that no monuments exist in the roadways at Sites 1,3,6,7,9,14 and 15 and that it will not be necessary to search for and recover any monuments in these areas.
- Title reports and any related documents will be provided by the city.



- Easement Exhibit Documents shall consist of 1 legal description and 1 exhibit map to accompany the actual easement document. These documents will be prepared in ready to record format and provided to the city. It is assumed the city will be responsible for preparation and recording of the final easement document.
- No property lines, easement lines or right of way lines will be staked under this scope of work.
- The city will open expose all required water valves and manholes and will open any which are sealed prior to commencement of any survey work.
- It is assumed that only 4 sites will have Records of Survey performed on them in conjunction with construction activity related to this project
- Topographic mapping will extend 5 feet beyond the face of curb in areas where new storm lines are planned and 15 feet in areas where new sanitary mains are planned
- Property lines and right of way lines will be shown based upon GIS by the city except in the two areas where the storm lines are to be built between two existing lots (Sites 2 and 5)

Project #SR-1 8000 Block of Fairway Drive

This site will entail mapping of the right of way of Fairway Drive for approximately 650 LF (between Tax Lot 500 3 1W 25BC and Tax Lot 1500 3 1W 25BC). Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation exists to define the right of way for this site. A Pre-Construction Record of Survey is not anticipated.

Topographic Mapping: \$3,540.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$4,110.00

Project #SR-2 Estates Post Road

This site will entail mapping of the right of way of Estates Post Road for approximately 500 LF (between Tax Lot 5100 3 1W 25AB and the north right of way line of Estates Court North) as well as a strip of land between Lots 53 and 54, Charbonneau Single Family East-Second Addition. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines and the property line between Lots 53 and 54. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated. A 10 foot drainage easement between Lots 53 and 54 was granted by the plat of Charbonneau Single Family East-Second Addition. It is assumed that additional easement documents are not needed for this site.

Topographic Mapping: \$3,800.00

Asbuilt Survey: \$570.00

Pre-Construction Record of Survey: \$2,600.00

Post-Construction Record of Survey: \$2,190.00

County Filing Fee for both surveys: \$800.00

Total Estimated Fee: \$9,960.00

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-3 Molalla Bend SE

This site will entail mapping of the right of way of approximately 200 LF of the cul-de-sac road in the southeast corner of Charbonneau Single Family-First Addition. Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation exists to define the right of way for this site. A Pre-Construction Record of Survey is not anticipated.

*Topographic Mapping: \$2,405.00
Asbuilt Survey: \$570.00
Total Estimated Fee: \$2,975.00*

Project #SR-4 French Prairie Drive near Del Monte Drive

This site will entail mapping of the right of way of French Prairie Road approximately 300 feet each way from Del Monte Drive and will also include Del Monte Drive to the end of the cul-de-sac. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of French Prairie Drive and Del Monte Court. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

*Topographic Mapping: \$3,800.00
Asbuilt Survey: \$570.00
Pre-Construction Record of Survey: \$2,600.00
Post-Construction Record of Survey: \$2,190.00
County Filing Fee for both surveys: \$800.00
Total Estimated Fee: \$9,960.00*

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-5 7300 & 7800 Block of Fairway Drive

This site will entail mapping of the right of way of Fairway Drive for approximately 650 LF (between Tax Lot 1800 3 1W 25BD and Tax Lot 3600 3 1W 25BC). Also included will be the right of way of Fairway Drive for approximately 300 LF south from the intersection of Arbor Lake Drive and Fairway Drive. It will also include mapping of a strip of land between lots 22 and 23, Fairway Estates at Charbonneau. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of French Prairie Drive and the property line between Lots 22 and 23. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated. Easement exhibit documents are anticipated.

*Topographic Mapping: \$5,150.00
Asbuilt Survey: \$870.00
Pre-Construction Record of Survey: \$2,600.00
Post-Construction Record of Survey: \$2,190.00
County Filing Fee for both surveys: \$800.00
Easement Exhibit Documents for 2 Properties: \$800.00
Total Estimated Fee: \$12,410.00*

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-6 Armitage Road South

This site will entail mapping of the right of way of approximately 500 LF of Armitage Road between Molalla Bend Road and Estates Post Road. Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation

exists to define the right of way for this site. A Pre-Construction Record of Survey is not anticipated.

*Topographic Mapping: \$3,050.00
Asbuilt Survey: \$570.00
Total Estimated Fee: \$3,620.00*

Project #SR-7 Middle Green Road

This site will entail mapping of the apparent right of way of approximately 250 LF of Lake Point Court. It will also mapping of the roadway of approximately 350 LF of Middle Green Road between Charbonneau V and Charbonneau VI. These roads appear to be private roads. Right of way lines may therefore not exist. Preliminary research suggests the presence of centerline monuments in Charbonneau VI but it is assumed that the project will not extend past the boundary of Charbonneau VI. *It is uncertain if adequate right of way monumentation exists to define the right of way for this site. A Pre-Construction Record of Survey is not anticipated.*

*Topographic Mapping: \$3,650.00
Asbuilt Survey: \$570.00
Total Estimated Fee: \$4,220.00*

Project #SR-8 Country View Loop

This site will entail mapping of the right of way of County View Loop for approximately 250 LF westerly from its intersection with County View Lane. It will also include mapping of the right of way of County View Lane for approximately 300 south to Gate Post Court. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of Country View Loop and County View Lane. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

*Topographic Mapping: \$3,800.00
Asbuilt Survey: \$570.00
Pre-Construction Record of Survey: \$2,600.00
Post-Construction Record of Survey: \$2,190.00
County Filing Fee for both surveys: \$800.00
Total Estimated Fee: \$9,960.00*

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-9 Boones Bend Road

This site will entail mapping of the right of way of approximately 350 LF of Boones Bend Road northerly from the intersection with Winchester Way. It will also include mapping of approximately 150 feet of Winchester Way easterly from the intersection with Boones Bend Road. Winchester Way appears to be a private road. Right of way lines may therefore not exist. *Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation exists to define the right of ways for this site. A Pre-Construction Record of Survey is not anticipated.*

*Topographic Mapping: \$3,650.00
Asbuilt Survey: \$570.00
Total Estimated Fee: \$4,220.00*

Project #SR-10 Arbor Lake Drive

This site will entail mapping of the right of way of Bunker Post Court. Also, Downs Post Road for approximately 250 east of Arbor Lake Drive. Also Arbor Lake Court for approximately 250 west of Arbor Lake Drive. Also, approximately 200 LF of Arbor Lake Drive south from the intersection with Arbor Lake Court. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of Bunker Post Court, Downs Post Road and Arbor Lake Court. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

Topographic Mapping: \$5,340.00

Asbuilt Survey: \$870.00

Easement Exhibit Documents for 2 Properties: \$800.00

Total Estimated Fee: \$7,010.00

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-11 Armitage Road North

This site will entail mapping of the right of way of Armitage Road approximately 600 feet between French Prairie Road and Armitage Court East. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of French Prairie Drive and Del Monte Court. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

Topographic Mapping: \$3,800.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$4,370.00

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-12 Lake Drive

This site will entail mapping of the right of way of Lake Drive for approximately 200 feet each way from the intersection of Fountain Lake Drive and Lake Drive. Preliminary research suggests the presence of centerline monuments. We are assuming that centerline monuments are present and will be used for location of the right of way lines of Lake Drive. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

Topographic Mapping: \$3,080.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$3,650.00

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-13 Country View Lane

This site will entail mapping of the right of way of Country View Lane approximately 700 feet between the intersection of Wheatland Run with Country View Lane and proceeding northerly on Country View Lane to the intersection with the northerly end of Country View Loop. Preliminary research suggests the presence of centerline monuments. We are assuming that

centerline monuments are present and will be used for location of the right of way lines of Country View Loop. A Pre-Construction Record of Survey and a Post-Construction Record of Survey is anticipated.

Topographic Mapping: \$3,650.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$4,220.00

Re-stake centerline monument boxes for contractor if required: \$450.00

Project #SR-14 Juliette Drive

This site will entail mapping of the right of way of Boones Bend Road for approximately 150 LF between French Prairie Road and Fairway Drive. It will also include mapping of Juliette Drive westerly from French Prairie Road for approximately 300 LF. Juliette Drive appears to be a private road. Right of way lines may therefore not exist. Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation exists to define the right of ways for this site. A Pre-Construction Record of Survey is not anticipated.

Topographic Mapping: \$2,860.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$3,430.00

Project #SR-15 Louvonne Drive

This site will entail mapping of the right of way of French Prairie Road for approximately 300 LF northerly from the intersection with Louvonne Drive. It will also include mapping of Louvonne Drive westerly from French Prairie Road for approximately 150 LF to the intersection with Riviera Drive. Louvonne Drive and Riviera Drive appear to be private roads. Right of way lines may therefore not exist. Preliminary research suggests no centerline monuments are present. It is uncertain if adequate right of way monumentation exists to define the right of ways for this site. A Pre-Construction Record of Survey is not anticipated.

Topographic Mapping: \$3,540.00

Asbuilt Survey: \$570.00

Total Estimated Fee: \$4,110.00



PRICE QUOTE

CCB 28397

DATE: June 16th 2015

CUSTOMER: Wallis Engineering

ATTN: Adam
PHONE: 360-852-9164

FAX:

EMAIL: adams.crafts@walliseng.net

PROJECT: CHARBONNEAU HIGH PRIORITY UTILITY REPAIR

SALESPERSON	AVAILABILITY	SITE LOCATION:			TERMS
GARY REESE		CHARBONNEAU, WILSONVILLE OR			NET 30 DAYS
QUANTITY	DESCRIPTION		UNIT PRICE	U.O.M	AMOUNT
5,295	STORM 12"		\$ 1.99	FT	\$ 10,537.05
2,055	STORM 15" - 30"		\$ 2.05	FT	\$ 4,212.75
1,430	SEWER 8" - 10"		\$ 1.99	FT	\$ 2,845.70
108	Locate Laterals:		\$ 40.00	EA	\$ 4,320.00
60	Storm lateral launch		\$ 110.00	EA	\$ 6,600.00
48	Lateral Launch:		\$ 110.00	EA	\$ 5,280.00
	Disposal:				
5	Disposal @ PPV		\$ 309.60	DY	\$ 1,548.00
8	Traffic Control:		\$ 50.00	DY	\$ 400.00
	Excludes: Water and permits				

THIS QUOTE IS VALID FOR 90 DAYS

Please note that \$220 was added to this fee to accommodate for meetings requested by the city in task 2.4.1.

Signature of Acceptance

SUBTOTAL \$ 35,743.50

TAX RATE N/A

SALES TAX -

SHIPPING & HANDLING

TOTAL \$ 35,743.50

Please note: Interest will be charged at 1.5% per month

THANK YOU FOR YOUR BUSINESS!

www.theironhorsegroup.com

PO BOX 789 Portland OR 97024 Phone 503.674-0980 Fax 503.674-0989

Fee Estimate
City of Wilsonville Charbonneau High Priority Utility Repair
 WE #1402A
 June 23, 2015

TASK	Wallis Engineering Staff Estimated Hours											Staff Cost	Expenses	Subconsultants		Total Cost	
	QC	E1	E2	E3	E4	E5	E6	T1	TW	C1	Surveyor			CCTV			
Task 1	Project Management and Administration	\$198	\$155	\$144	\$126	\$103	\$96	\$86	\$96	\$86	\$71						
1.1	Project Kick-Off Meeting			6	8							4	\$2,156				\$2,156
1.2	Project Management and Coordination												\$5,184				\$5,184
1.2.1	Point of Contract Person			36									\$2,592				\$2,592
1.2.2	Maintain Schedule			18									\$5,148				\$5,148
1.2.3	Monthly Progress Reports			18								36	\$5,148				\$5,148
	TASK 1 SUBTOTAL	0	0	78	8	0	0	0	0	0	0	40	\$15,080	\$0	\$0	\$0	\$15,080
Task 2	Preliminary Design, Public Involvement, and Phasing																
2.1	Review Existing Data			8	12	40			24				\$9,088	\$101 (M)			\$9,189
2.2	Public Information Materials			12	4	8				6	2		\$3,714	\$500 (P)			\$4,214
2.3	Public Open House			6		8							\$1,688				\$1,688
2.4	Pipeline Video Inspection and Connection Verification																\$0
2.4.1	Pre Video Inspection Scoping Meeting			6		4							\$1,276	\$34 (M)	\$220		\$1,530
2.4.2	Main Line Cleaning and Video Inspection					12		18					\$2,784	\$34 (M)	\$21,498		\$24,316
2.4.3	Lateral Video Inspection					8		30					\$3,404	\$34 (M)	\$17,820		\$21,258
2.4.4	Post Video Inspection Summary Meeting			8		6							\$1,770				\$1,770
2.5	Topographic Surveying																
2.5.1	Topographic Survey			4		8		16	16				\$4,312	\$34 (M)	\$60,627		\$64,973
2.5.2	Easements			2					4				\$672		\$1,760		\$2,432
2.6	Condition Assessment and Improvement Alternatives																
2.6.1	Existing Condition Summary		8	10		30		30	60	6	2		\$14,768				\$14,768
2.6.2	Sanitary Lateral and Manhole Conditions			8		24		40					\$7,064	\$67 (M)			\$7,131
2.6.3	Alternatives Analysis			20		20		30		12	4		\$8,836				\$8,836
2.7	Preliminary (60%) Design Documents	8	12	32		43	16	86	86				\$29,669	\$67 (M)			\$29,736
2.8	Construction Phasing			6	8	16				6	2		\$4,178				\$4,178
2.9	Advance (90%) Design Documents	8	12	16	32	32	16	60	60	16	8		\$27,476	\$67 (M)			\$27,543
	TASK 2 SUBTOTAL	16	32	138	56	259	32	310	250	46	18	18	\$120,699	\$938	\$62,387	\$39,538	\$223,562
Task 3	Final Design and Bidding Assistance – Project #1																
3.1	Final Design Meeting			6				8					\$1,552	\$34 (M)			\$1,586
3.2	Final Design Documents	4		12	8	16	8	16	24	8	8		\$10,880				\$10,880
3.3	Bidding Assistance			5		8							\$1,544				\$1,544
	TASK 3 SUBTOTAL	4	0	23	8	24	8	24	24	8	8	8	\$13,976	\$34	\$0	\$0	\$14,010
Task 4	Construction Support – Project #1																
4.1	Preconstruction Services			8				8					\$1,840	\$34 (M)			\$1,874
4.2	Construction Engineering Services			12		72		0	0	0	0		\$9,144	\$1,008 (M)			\$10,152
4.3	Record Drawings			4		8			12		6		\$2,978	\$0	\$3,355		\$6,333
4.4	Monument Record of Survey			2		0		0	0	0	0		\$288	\$0	\$8,199		\$8,487
4.5	Post-Construction Review Meeting			6		8		0	0	0	0		\$1,688	\$0			\$1,688
	TASK 4 SUBTOTAL	0	0	32	0	88	0	8	12	0	6	6	\$15,938	\$1,042	\$11,554	\$0	\$28,534
Task 5	Final Design and Bidding Assistance – Project #2																
5.1	Final Design Meeting	0	0	6	0	0	0	8	0	0	0		\$1,552	\$34 (M)			\$1,586
5.2	Final Design Documents	4	0	12	8	16	8	16	24	8	8		\$10,880	\$0			\$10,880
5.3	Bidding Assistance	0	0	5	0	8	0	0	0	0	0		\$1,544	\$0			\$1,544
	TASK 5 SUBTOTAL	4	0	23	8	24	8	24	24	8	8	8	\$13,976	\$34	\$0	\$0	\$14,010
Task 6	Construction Support – Project #2																
6.1	Preconstruction Services	0	0	8	0	0	0	8	0	0	0		\$1,840	\$34 (M)			\$1,874
6.2	Construction Engineering Services	0	0	12	0	72	0	0	0	0	0		\$9,144	\$1,008 (M)			\$10,152
6.3	Record Drawings	0	0	4	0	8	0	0	12	0	6		\$2,978	\$0	\$3,355		\$6,333
6.4	Monument Record of Survey	0	0	2	0	0	0	0	0	0	0		\$288	\$0	\$8,199		\$8,487
6.5	Post-Construction Review Meeting	0	0	6	0	8	0	0	0	0	0		\$1,688	\$0			\$1,688
	TASK 6 SUBTOTAL	0	0	32	0	88	0	8	12	0	6	6	\$15,938	\$1,042	\$11,554	\$0	\$28,534
Task 7	Final Design and Bidding Assistance – Project #3																
7.1	Final Design Meeting	0	0	6	0	0	0	8	0	0	0		\$1,552	\$34 (M)			\$1,586
7.2	Final Design Documents	4	0	12	8	16	8	16	24	8	8		\$10,880	\$0			\$10,880
7.3	Bidding Assistance	0	0	5	0	8	0	0	0	0	0		\$1,544	\$0			\$1,544
	TASK 7 SUBTOTAL	4	0	23	8	24	8	24	24	8	8	8	\$13,976	\$34	\$0	\$0	\$14,010
Task 8	Construction Support – Project #3																
8.1	Preconstruction Services	0	0	8	0	0	0	8	0	0	0		\$1,840	\$34 (M)			\$1,874
8.2	Construction Engineering Services	0	0	12	0	72	0	0	0	0	0		\$9,144	\$1,008 (M)			\$10,152
8.3	Record Drawings	0	0	4	0	8	0	0	12	0	6		\$2,978	\$0	\$3,355		\$6,333
8.4	Monument Record of Survey	0	0	2	0	0	0	0	0	0	0		\$288	\$0	\$8,199		\$8,487
8.5	Post-Construction Review Meeting	0	0	6	0	8	0	0	0	0	0		\$1,688	\$0			\$1,688
	TASK 8 SUBTOTAL	0	0	32	0	88	0	8	12	0	6	6	\$15,938	\$1,042	\$11,554	\$0	\$28,534
GRAND TOTAL		28	32	381	88	595	56	406	358	70	100		\$225,521	\$4,166	\$97,048	\$39,538	\$366,274

FEE SUMMARY			
Staff	Hours	Rate	Fees
QC - Quality Control	28	\$198	\$5,544
E1 - Engineer 1	32	\$155	\$4,960
E2 - Engineer 2 (PM)	381	\$144	\$54,864
E3 - Engineer 3	88	\$126	\$11,088
E4 - Engineer 4	595	\$103	\$61,285
E5 - Engineer 5	56	\$96	\$5,376
E6 - Engineer 6	406	\$86	\$34,916
T1 - Technician 1	358	\$96	\$34,368
TW - Technical Writer	70	\$86	\$6,020
C1 - Clerical 1	100	\$71	\$7,100
Total Fees from Staff			\$225,521
Subconsultant		Fees	
Surveyor- Compass Land Surveyors			\$97,048
CCTV- Iron Horse Group			\$39,538
Total Fees from Subconsultants			\$136,586
NOTE: Fee includes 10% markup			
Expenses			Cost
Printing (P)			\$500
Mileage (M) at \$0.565/mi			\$3,666
Total Fees from Expenses			\$4,166
TOTAL BUDGET			\$366,273

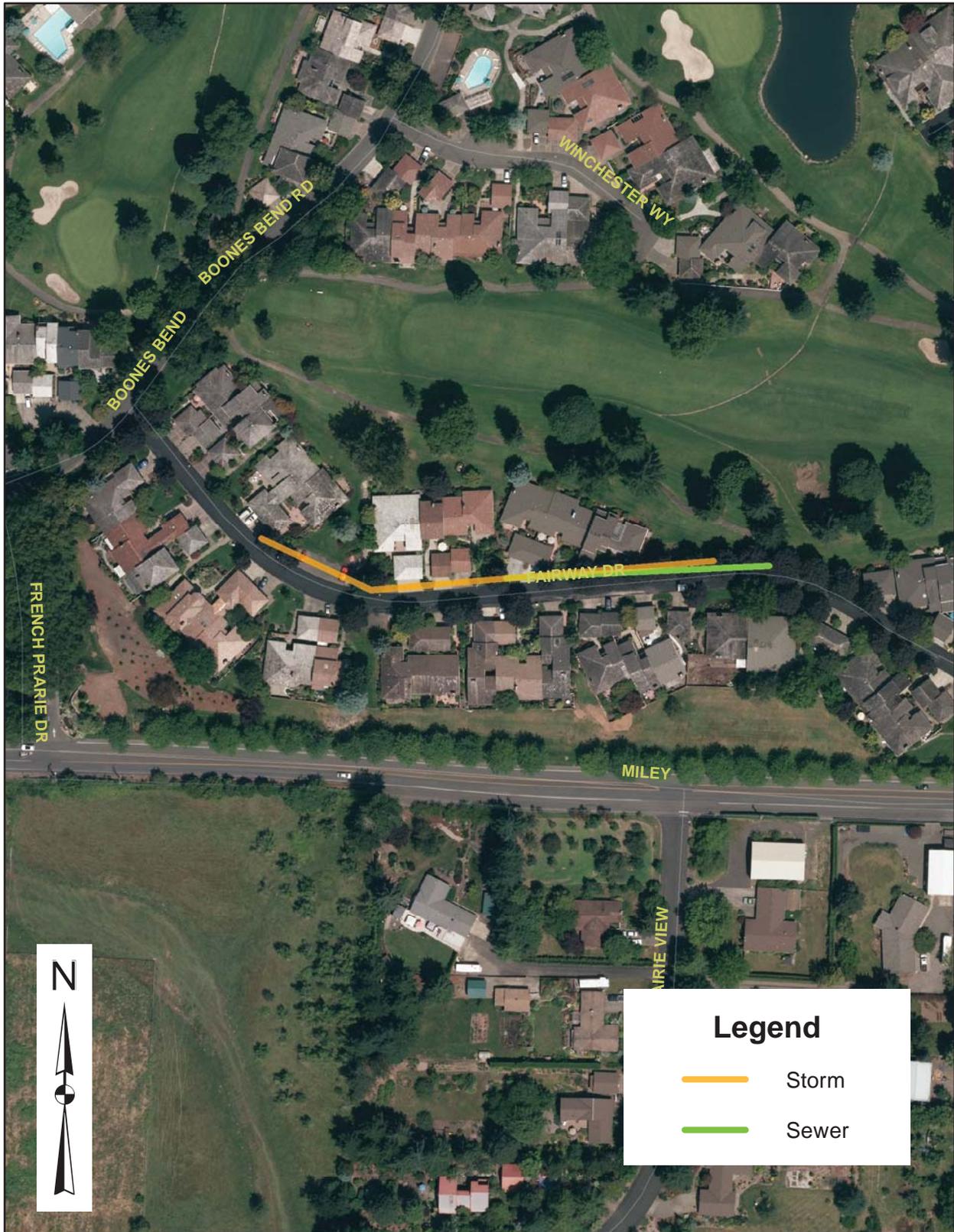
Survey Cost Summary								
Project #	Anticipated Tasks			Contingency Task 4.4/6.4/8.4				Total
	2.5.1 Topo	2.5.2 Easements	4.3/6.3/8.3 Record Drawings	4.4 Pre- Survey	4.4 Post- Survey	4.4 File Fee	4.4 Total	
1	\$ 3,540		\$ 570					\$ 4,110
2	\$ 3,800		\$ 570	\$ 2,600	\$ 2,190	\$ 800	\$ 5,590	\$ 9,960
3	\$ 2,405		\$ 570					\$ 2,975
4	\$ 3,800		\$ 570	\$ 2,600	\$ 2,190	\$ 800	\$ 5,590	\$ 9,960
5	\$ 5,150	\$ 800	\$ 870	\$ 2,600	\$ 2,190	\$ 800	\$ 5,590	\$ 12,410
6	\$ 3,050		\$ 570					\$ 3,620
7	\$ 3,650		\$ 570					\$ 4,220
8	\$ 3,800		\$ 570	\$ 2,600	\$ 2,190	\$ 800	\$ 5,590	\$ 9,960
9	\$ 3,650		\$ 570					\$ 4,220
10	\$ 5,340	\$ 800	\$ 870					\$ 7,010
11	\$ 3,800		\$ 570					\$ 4,370
12	\$ 3,080		\$ 570					\$ 3,650
13	\$ 3,650		\$ 570					\$ 4,220
14	\$ 2,860		\$ 570					\$ 3,430
15	\$ 3,540		\$ 570					\$ 4,110
Total	\$ 55,115	\$ 1,600	\$ 9,150	\$ 10,400	\$ 8,760	\$ 3,200	\$ 22,360	\$ 88,225
Mark Up (10%)	\$ 60,627	\$ 1,760	\$ 10,065	\$ 11,440	\$ 9,636	\$ 3,520	\$ 24,596	\$ 97,048

Summary Prepared by Wallis Engineering

Project Location Map
High Priority Spot Repair Scenario



Project #SR-1 - 8000 Block of Fairway Drive



Project #SR-2 - Estates Post Road



Project #SR-3 - Mollala Bend SE



Project #SR-4 - French Prairie Drive Near Del Monte Drive



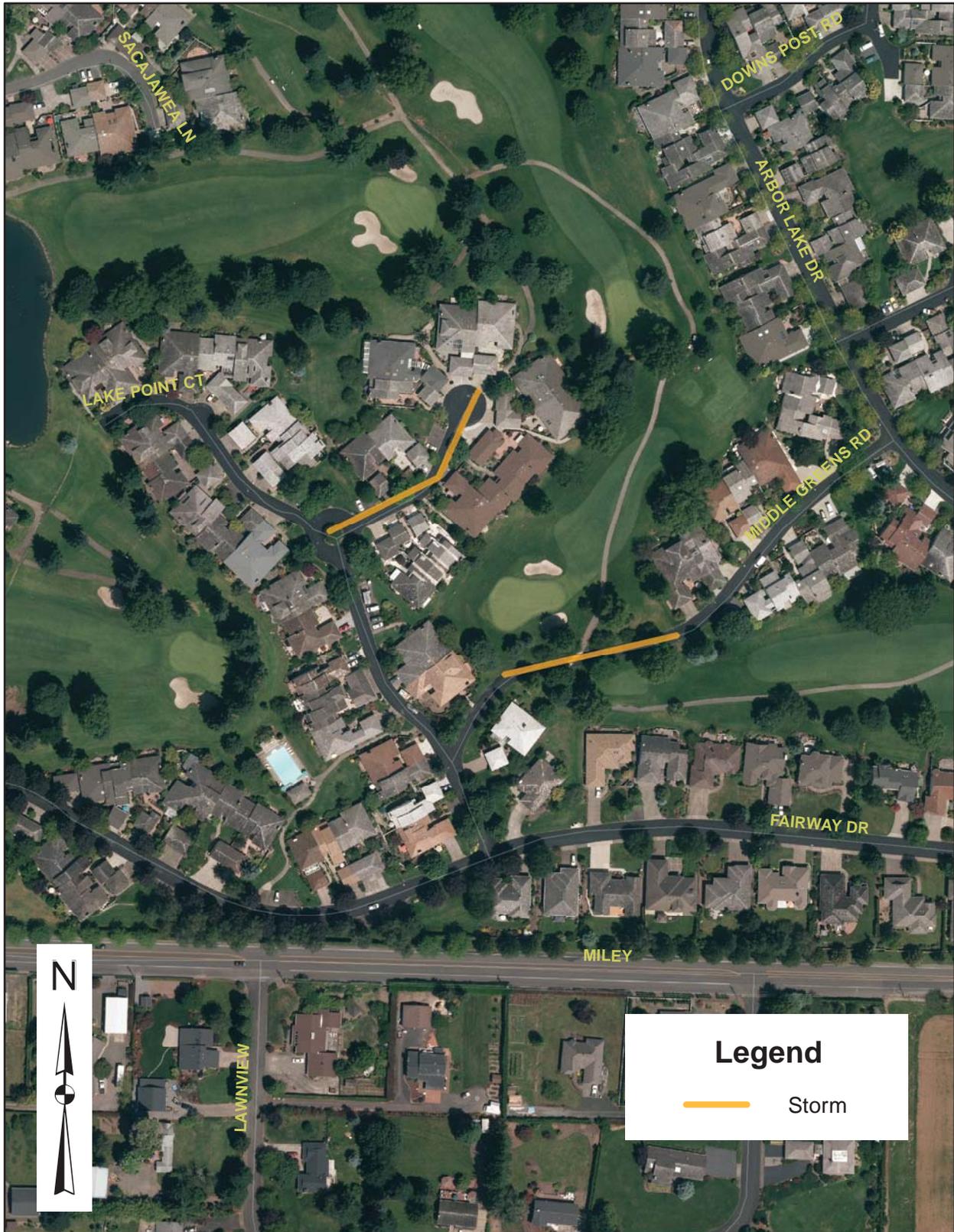
Project #SR-5 - 7300 & 7800 Block of Fairway Drive



Project #SR-6 - Armitage Road South



Project #SR-7 - Middle Greens Road



Project #SR-8 - Country View Loop



Project #SR-9 - Boones Bend Road



Project #SR-10 - Arbor Lake Drive



Project #SR-11 - Armitage Road North



Project #SR-12 - Lake Drive



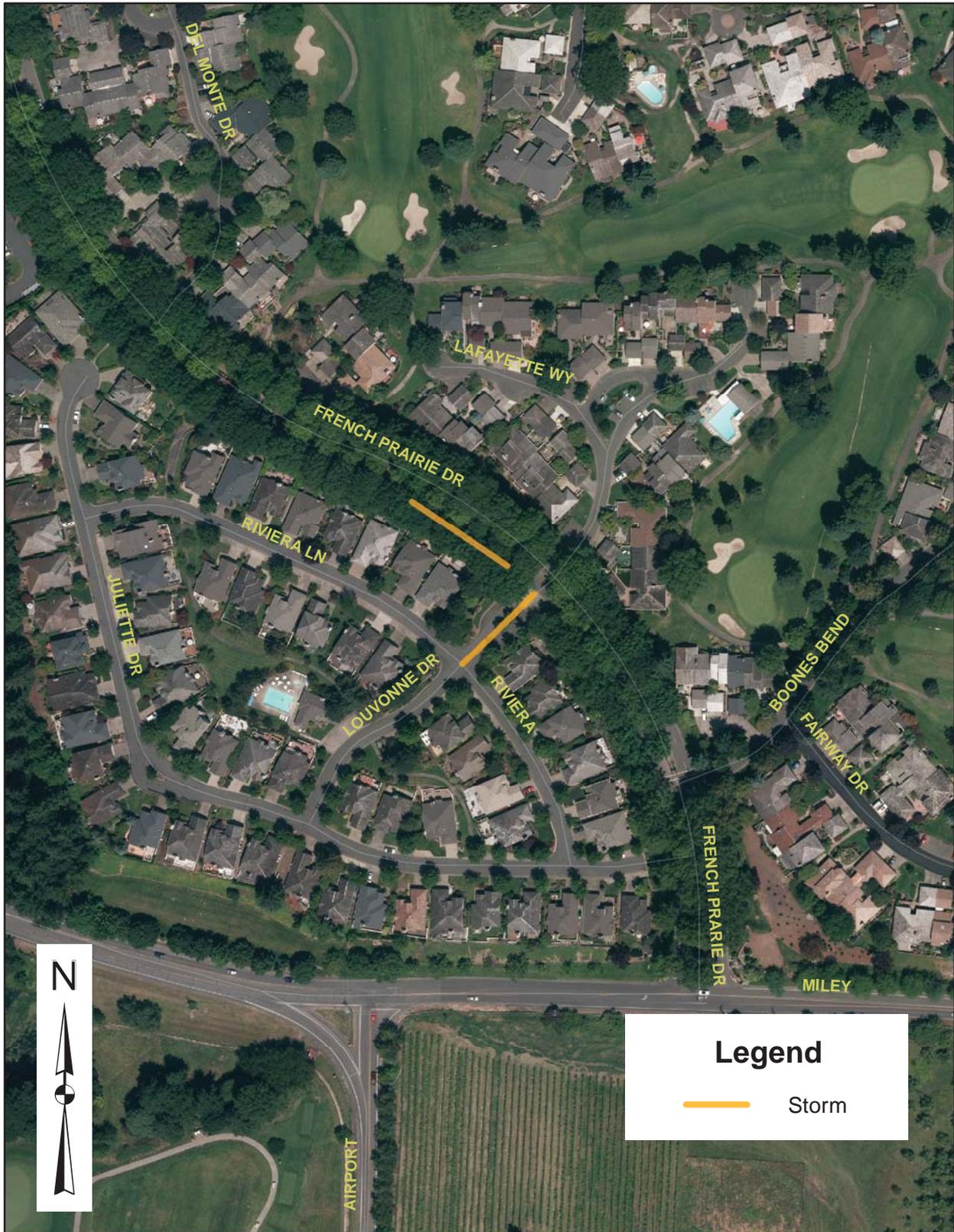
Project #SR-13 - Country View Lane



Project #SR-14 - Juliette Drive



Project #SR-15 - Louvonne Drive





2015 Three Year Aggregate Rates

(Rates will expire on 12/31/2018)

<u>Rate Class</u>	<u>Three Year Aggregate Rates</u>
Principal Engineer	\$198
Engineer 1	\$155
Engineer 2	\$144
Engineer 3	\$126
Engineer 4	\$103
Engineer 5	\$96
Engineer 6	\$86
Senior Designer	\$123
Technician 1 (CAD/GIS)	\$96
Technical Writer	\$86
Clerical 1	\$71

- These hourly rates include in-house office expenses, photocopying, and other incidental items. Mileage will be reimbursed at the current standard IRS rate. Outside expenses will be billed at cost plus 10%.

A regular meeting of the Wilsonville City Council was held at the Wilsonville City Hall beginning at 7:30 p.m. on Monday, June 15, 2015. Mayor Knapp called the meeting to order at 7:36 p.m., followed by roll call and the Pledge of Allegiance.

The following City Council members were present:

Mayor Knapp
Councilor Starr
Councilor Fitzgerald
Councilor Stevens
Councilor Lehan

Staff present included:

Bryan Cosgrove, City Manager
Jeanna Troha, Assistant City Manager
Mike Kohlhoff, City Attorney
Sandra King, City Recorder
Susan Cole, Finance Director
Cathy Rodocker, Assistant Finance Director
Mark Ottenad, Government and Public Affairs Director
Jon Gail, Community Relations Coordinator
Nancy Kraushaar, Community Development Director

Motion to approve the order of the agenda.

Motion: Councilor Starr moved to approve the order of the agenda. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 5-0.

MAYOR'S BUSINESS

A. Upcoming Meetings

Mayor Knapp talked about the regional meetings and events he participated in on behalf of the City, in particular the Oregon Institute of Technology (OIT) senior program wherein seniors displayed their senior thesis projects in the engineering disciplines.

COMMUNICATIONS

A. Greater Portland Inc. (GPI) Economic-Development Presentation – Mayor Lou Ogden, Small Cities Consortium Chair, GPI Board Member; Alisa Pyszka, VP of Recruitment and Expansion

Mayor Ogden explained Greater Portland Inc. (GPI) is dedicated to portraying and marketing the greater Portland area around the world, and spoke about the changes the organization went through leading to the formation of GPI.

Using a PowerPoint slide show Ms. Pyszka described the regional public-private partnership established to coordinate a transparent approach to economic development. GPI is a merger between publicly funded regional partners and privately driven Greenlight Greater Portland. Their goal is to market the region worldwide, recruit new businesses, and retain and grow existing businesses. Their 2015 work plan is to unite the region to compete globally. Ms. Pyszka spoke about the services GPI provides and the types of industries that are looking at the region.

Mayor Ogden said a plant locating in Wilsonville is a win for Wilsonville, but also there is a “ripple effect” or beneficial gain throughout the region.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

Jim McCreight, Washington County Museum introduced the new Washington County Museum Director Mark Harmon.

Mark Harmon stated the Museum was seeking exposure to Washington County communities, and increased participation of schools, cities and organizations in the Museum. Beginning in September the Museum would be selecting a city to highlight each month at the Museum.

Mayor Knapp noted there was a Historical Society in Wilsonville, and requested that information be provided to Mr. Harmon.

The Mayor observed there were several people who wanted to speak about the Frog Pond Area Concept Plan; however, that topic was not on the agenda for this evening. He said it was frustrating to hear rumors repeated, and inaccuracies retold as fact. He reiterated no apartments were planned for the Frog Pond area, and the lot sizes are in the 10,000-12,000 square foot size. The Mayor recommended reading-through the City's Planning website for accurate information.

Debi Laue expressed concern about the City's consultants using historical data to predict future expectations. She felt Frog Pond was an opportunity to offer housing choices not available even in surrounding cities. Ms. Laue submitted letters from Jamie Harris and Natalie Long, Elite Development Northwest, and Phillip Pahlisch, owner and VP of Northwest Oregon and Southwest Washington Region, Pahlisch Homes, Inc. The letters have been made part of the record.

Peter Kusyk, developer, spoke about the local market trends in that he is developing three 12,000 square foot lots and the price for these lots continues to increase since building began. He said demand for homes on large lots now exceeds any available property and only Frog Pond has the potential to offer that type of housing. Mr. Kusyk believed there would be less traffic with large lot development since there are fewer homes, therefore the roads could be narrower, and private, with rolling curbs which are less expensive to build.

Councilor Stevens asked Mr. Kusyk if the new homes he is building on these three lots are single story. Mr. Kusyk replied they have the master on the main floor, but one has a second story, and two have downstairs.

Doris Wehler submitted her testimony in writing which has been made part of the record. She suggested reconfiguring Option F as proposed by the Planning Commission to have 174 large lots, 281 medium lots and 105 small lots.

Lori Loen agreed with the comments made by Ms. Laue and Ms. Wehler, and stated she liked the direction of the changes being made. She suggested the inclusion of accessory dwelling units on small lots would increase density while providing homes for students or parents.

Sharon Rebers asked if URA funds would be used to fund infrastructure in Frog Pond as was done in Villebois. Mayor Knapp advised public sentiment was that development should pay its own way; however, there were no plans yet one way or another.

Elizabeth McCord thought the information on-line regarding Frog Pond and the survey questions was skewed towards a specific response. She wanted more diversity of housing types on larger lot sizes similar to Meadows, and to have growth controlled. Ms. McCord felt schools and sports fields needed to be built before housing in Frog Pond.

David Kelso agreed with Ms. McCord's comments regarding the survey. He referred to the comments made by GPI representatives and thought one way to attract the higher paying tech employers and jobs is to have "professional level" housing options available.

Shelesha Kelso supported the prior testimony. She was concerned with the increases in traffic and the difficulties in traveling from one side of town to the other, and was unhappy to see farm land outside of Wilsonville disappear with development.

COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS

A. Council President Starr – (Park & Recreation Advisory Board Liaison) Councilor Starr thanked the community members who spoke tonight. Referring to the Kelso's comments, he said he liked his home but using the stairs make his knees hurt, so he was looking towards the future. With his last child in college he is looking towards finding a single level home and still have some property but there are not many options in town.

The Councilor had produced a copy of the Market Action Report for the Leland Group who are the Frog Pond consultants. He agreed with Ms. Laue's statements about conducting a forward looking opportunity analysis rather than using historical data. The report the Leland Consultants used was from October 2014 which stated there is 2.8 months of home inventory for sale; however, the inventory rate now is 1.7 months. This means there are no homes for sale, or the homes are overpriced. We are at a place where we need supply right now.

B. Councilor Fitzgerald – (Development Review Panels A & B Liaison) announced the next meeting date for DRB Panel B, and the Boy Scout plant sale set for June 20th. Councilor Fitzgerald commented some of the written comments the Council received are requests for larger lots, and also for affordable lots. She had someone contact her recently who said they wanted a larger lot that didn't cost \$500,000. Councilor Fitzgerald said she looked around the area to see what was available for that amount and was informed by a realtor that one can build a house in Wilsonville, and build the same house for \$100,000 less in Milwaukie or another neighboring community. The challenge is to figure out how to meet all of these needs, there are a lot of factors to consider.

C. Councilor Stevens – (Library Board and Wilsonville Seniors Liaison) stated the Wilsonville Seniors met and heard from Jon Gail about the *Boones Ferry Messenger* as well as Sadie Wallenberg who spoke about the programs offered to seniors at the Community Center. She announced the date of the annual Oregon Road Runners Group fun run and the Leadership Academy graduation. On a personal note, Councilor Stevens commented she was looking to downsize now that her children are grown. The idea of downsizing, being able to travel more and to "lock and go" was appealing. Having the diversity of housing choices is important in the community and being able to meet the needs for all stages of life is one of the elements that make Wilsonville a welcoming engaging community.

D. Councilor Lehan– (Planning Commission and CCI Liaison) Councilor Lehan reported the Planning Commission discussed the Frog Pond Area Concept Plan at their last meeting. At the next meeting of the Commission they will be discussing the Coffee Creek concept plan, the Frog Pond Area Concept Plan, the Coffee Creek Industrial Area Form Based Code, and the Basalt Creek concept plan. She noted she and Mayor Knapp would be speaking in Charbonneau on Thursday as part of a panel. The Councilor noted the I-5 Connection Concert on June 20th.

Mayor Knapp announced the Grace Chapel 5K fun run on June 20th the proceeds will go to Living Water International, and the Graham Oaks Park event both set for July 11th.

CONSENT AGENDA

Mr. Kohlhoff read the titles of the Consent Agenda into the record.

A. **Resolution No. 2542**

A Resolution Of The City Of Wilsonville Approving An Agreement With TWV. Inc. (DBA Sustainable Cleaning Systems) For The Project Known As Janitorial Services.

B. Resolution No. 2538

A Resolution Authorizing A Five Year Capital Interfund Loan From The General Fund To The Stormwater Capital Fund

C. Minutes of the June 1, 2015 City Council Meeting.

Motion: Councilor Fitzgerald moved to approve the Consent Agenda. Councilor Lehan seconded the motion.

Vote: Motion carried 5-0.

PUBLIC HEARING

A. Resolution No. 2539

A Resolution Authorizing A Supplemental Budget Adjustment For FY 2014-15

The title of the resolution was read into the record by the City Attorney.

Mayor Knapp read the public hearing process and opened the hearing at 8:58 p.m.

Ms. Rodocker provided the staff report. Oregon's Local Budget Law allows the council to amend the adopted budget for an occurrence or condition that as not known at the time the budget was adopted. A transfer resolution moves expenditures from one category to another within a specific fund and does not increase the overall budget that was approved during the annual budget process. A supplemental budget adjustment will impact the budget by increasing revenues and/or expenditures. The supplemental adjustment can also recognize expenditures that exceed ten percent of the adopted budget expenditures or fifteen percent of the funds adopted contingency.

Resolution No. 2539 is a budget adjustment which will provide the needed budget authority for the remainder of the fiscal year. A budget adjustment requires a public hearing as part of the adoption process.

The budget adjustments include the addition of \$35,000 to the Memorial Park Master Plan project. These funds were budgeted for last fiscal year but the project was delayed to this fiscal year. In addition, due to the continued growth in both the permit revenue and number of utility customers, an increase is needed for additional bank fees. In total, an additional \$53,900 over a number of funds will be required to meet the current estimates. A \$10,000 increase is required for the Street Lighting Fund for additional utility costs.

And lastly, a number of net zero transfers will be made to recognize the additional budget requirements for several projects.

Mayor Knapp invited public comment, hearing none he closed the hearing at 9:03 p.m.

Motion: Councilor Lehan moved to approve Resolution No. 2539. Councilor Fitzgerald seconded the motion.

Vote: Motion carried 5-0.

NEW BUSINESS

A. **Resolution No. 2540**

A Resolution Of The City Of Wilsonville Authorizing Support Grant Agreement With Wilsonville Community Sharing.

Mr. Kohlhoff read the title of Resolution No. 2540 into the record.

Susan Cole, Finance Director, presented the staff report. As discussed in the June 1, 2015 City Council work session, the annual Support Grant Agreement between the City of Wilsonville and Wilsonville Community Sharing (WCS) expires June 30, 2015. Additionally, the current agreement specifies that when the Portland area unemployment rate dips below seven percent, "the renter utility bill-paying assistance program shall cease."

During the work session, Council discussed the merits of using the Portland area unemployment rate as a guideline to offer utility bill-paying assistance, and directed staff to work with WCS on alternative guidelines for the assistance program. Recognizing that the current contract expires on June 30, and that the community continues to have need for utility bill-paying assistance, Council provided direction to staff to bring forward a proposal that extends the utility bill-paying assistance for a period of time so the guidelines could be amended.

Additionally, Council directed staff to bring forward a Support Grant Agreement for the general purpose portion for the next fiscal year.

For the renters utility bill-paying assistance program, the use of the Portland unemployment rate as a guideline to provide utility assistance has been removed. The proposal is to divide the funding (\$16,000) for this program in half, with the first half provided until December 31, 2015, while guidelines of the program for utility bill-paying assistance are developed. The second half of the funding would be contingent upon Council acceptance of the guidelines.

The general purpose portion of the grant reflects an increase of \$1,323, reflecting inflation, and increases from \$30,677 in FY 14-15 to \$32,000 in FY 15-16.

Two administrative changes are suggested to the overall grant agreement. The first is to have WCS submit their annual IRS Form 990 to the City within 10 business days of filing it with the IRS. The second change modifies the interest rate charged to WCS if the City finds that the grant funds have been inappropriately used and therefore must re-pay the City. It changes the interest rate from 12 percent to instead be based on the Federal Funds Rate plus 5 percent. The Federal Funds Rate is currently at 0.25 percent. The Federal Funds Rate is variable, even though

it hasn't changed in a number of years, and is the rate banks typically use to set their interest rates and credit card rates.

This resolution and agreement would be effective from July 1, 2015, through June 30, 2016. One-half of the \$16,000 available for the renters utility bill-paying assistance would be available through December 31, 2015. The remainder of the funding would be available contingent upon Council approval of guidelines on providing this assistance. Staff intends to work with WCS on developing these guidelines over the next several months, and to bring a proposal to the City Council for their consideration sometime in the fall of 2015

Motion: Councilor Fitzgerald moved to approve Resolution No. 2540. Councilor Starr seconded the motion.

Vote: Motion carried 5-0.

B. Resolution No. 2541

A Resolution Of The Wilsonville City Council Creating The Wilsonville Tourism Promotion Committee.

Mr. Kohlhoff read the title of Resolution No. 2541 for the record.

Mark Ottenad, Government and Public Affairs Director, presented the staff report. City Council reviewed during the May 18, 2015, work session a proposal and directed staff to proceed with some suggested modifications for formation of the Tourism Promotion Committee.

The Council modified the proposal by adding:

1. To the list of potential committee stakeholders other possible representatives of General Retail and Restaurant businesses;
2. A Wilsonville Chamber of Commerce representative to the committee as an additional ex-officio member, bringing to 12 the total number of committee members.

The Tourism Promotion Committee ("Committee") has three primary areas of responsibility:

1. The Committee oversees implementation of the "Visit Wilsonville" Tourism Development Strategy and is charged specifically to develop a larger Five-Year Action Plan and annual One-Year Implementation Plans for fulfilling the Tourism Development Strategy, to be presented and recommended to City Council for approval.
2. The Committee makes recommendations to the City Council for tourism- and visitor-related marketing, promotions, expenditures and related programs and services that will result in increased tourism activity, as measured by overnight room stays at local lodging properties.
3. The Committee makes recommendations to City Council concerning the selection and disbursement of the annual Tourism Grant Programs operated by the City, including the Community Tourism Matching Grant Program (currently \$25,000 per year) and the Clackamas County Tourism Community Partnership Grant Program (currently \$20,000 per year).

After adoption of Resolution No. 2541, staff will notify known and interested parties in the City's tourism promotion efforts and promote availability of the committee positions during the July–August timeframe using direct outreach, media releases, web and social media postings and announcements in The Boones Ferry Messenger.

Using an August 30 application deadline, staff will aim to advance a roster of candidates for the Mayor's consideration and nomination to City Council during September, with Council approval during the first meeting of October.

At this time no additional budget impacts beyond that which has been budgeted are anticipated. However, the Tourism Promotion Committee may bring recommendations to the Council that carry budgetary implications.

An extensive community engagement process occurred with a citizen task force that developed *Wilsonville Tourism Development Strategy, May 2014*. Public and interested parties were notified about proposal for formation of Tourism Promotion Committee, which received all favorable reviews.

Anticipated results include additional visitor and tourism spending within the community that benefit primarily smaller hospitality and services businesses and also area lodging properties (along with increased transient lodging tax revenues to state and local governments).

Formation of the Tourism Promotion Committee is in alignment with Council goals and priorities as outlined in the *Wilsonville Tourism Development Strategy, May 2014*.

Mayor Knapp asked if the Chamber has endorsed the proposal.

Mr. Ottenad said he had received the indication from Mr. Postma the Chamber is in support of the proposal.

Motion: Councilor Fitzgerald moved to approve Resolution No. 2541. Councilor Lehan seconded the motion.

Councilor Fitzgerald thanked everyone for the discussions leading to the creation of the Tourism Promotion Committee; she was pleased the Chamber supported the program and looked forward to the results.

Vote: Motion carried 5-0.

CITY MANAGER'S BUSINESS

Mr. Cosgrove stated the Quarterly Goals Update is being reformatted and once completed will be sent to the Council.

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CITY OF WILSONVILLE
CITY COUNCIL MEETING MINUTES

LEGAL BUSINESS – There was no report.

ADJOURN

Mayor Knapp adjourned the meeting at 9:15 p.m.

Respectfully submitted,

Sandra C. King, MMC, City Recorder

ATTEST:

Tim Knapp, Mayor



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: July 6, 2015</p>	<p>Subject: Ordinance No. 769 Wilsonville Code, Chapter 3, City Property and Chapter 8, Environment</p> <p>Staff Member: Kerry Rappold Department: Community Development</p>	
<p>Action Required</p> <p><input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: 5/18/15 <input checked="" type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable</p> <p>Comments:</p>	
<p>Staff Recommendation: Staff recommends City Council adopt Ordinance 769.</p>		
<p>Recommended Language for Motion: I move to approve Ordinance No. 769.</p>		
<p>PROJECT / ISSUE RELATES TO: <i>Storm water Master Plan</i></p>		
<p><input type="checkbox"/> Council Goals/Priorities</p>	<p><input type="checkbox"/> Adopted Master Plan(s)</p>	<p><input checked="" type="checkbox"/> Not Applicable</p>

ISSUE BEFORE COUNCIL:

Amendments to the Chapters 3 and 8 of the Wilsonville Municipal Code related to erosion control standards.

EXECUTIVE SUMMARY:

Revisions to Chapter 3 and 8:

The proposed revisions to Chapter 3 and Chapter 8 affect the current erosion control requirements. The requirements will be updated and moved from Chapter 3 to Chapter 8. In addition, outdated code sections related to the Public Works Standards will be deleted in Chapter 3.

Ordinance No. 482 was adopted in April 1997, which included the existing erosion control requirements. These requirements were added to Chapter 3. The proposed revisions are necessary to incorporate current best management practices and address federal and state requirements. In revising the requirements, staff determined it would be preferable to have the updated requirements in Chapter 8 because of the relationship to stormwater management.

Chapter 8 was originally developed to address policies related to Water Conservation, Sanitary Sewer Use, Industrial Pretreatment Regulations, Solid Waste, and Business Recycling. In 2014, Chapter 8 was amended to incorporate stormwater policies and implementation measures identified in the 2012 Stormwater Master Plan. In addition, the amendments to Chapter 8 provided the City the ability to enforce the National Pollution Discharge Elimination System (NPDES) Stormwater Permit requirements.

PROPOSED REVISIONS		
Code Section	Action	Reason
Chapter 3 – Section 3.294	Delete references to Public Works Standards	Outdated and no longer necessary
Chapter 3 – Section 3.294	Delete erosion control requirements	Moved to Chapter 8
Chapter 8 – Section 8.536 – 8.570	Incorporate updated erosion control requirements	More suitable location due to relationship to stormwater management

Erosion Control Inspection Fee:

The existing and proposed erosion control requirements include a reference to collecting a fee to defray the costs of plan review, enforcement, and field inspection. Currently, only a fee is charged for plan review. Staff is recommending a fee be added to address the costs of field inspections. At a future date, a fee resolution will be brought to the Council for their review. The fee will be based on recovering the costs associated with the program and take into account comparable fees charged in other jurisdictions.

EXPECTED RESULTS:

Ensuring the City’s ability to adequately enforce erosion control requirements and comply with NPDES Stormwater Permit requirements.

TIMELINE:

Not Applicable

CURRENT YEAR BUDGET IMPACTS:

There are no anticipated financial impacts for revisions to Chapter 3 and Chapter 8.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 5/7/15

LEGAL REVIEW / COMMENT:

Reviewed by: MEK_____ Date: 5/8/2015_____

Ordinance is approved as to form.

COMMUNITY INVOLVEMENT PROCESS:

A public hearing will be conducted on the proposed revisions to Chapters 3 and 8.

POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY

Benefits to the community include: more effective erosion control requirements and the protection of natural resources and public infrastructure.

ALTERNATIVES:

Not Applicable.

CITY MANAGER COMMENT:

ATTACHMENTS

Not applicable

ORDINANCE NO. 769

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 3, CITY PROPERTY AND CHAPTER 8, ENVIRONMENT TO ADD UPDATED EROSION CONTROL REQUIREMENTS

WHEREAS, the City's current erosion control requirements were adopted with Ordinance No. 482 on April 21, 1997, and codified in Chapter 3 of the Wilsonville Code; and

WHEREAS, portions of Chapter 3, City Property and Chapter 8, Environment need to be revised to update erosion control requirements and comply with State and Federal regulations; and

WHEREAS, preventing erosion is a principal way to protect water resources. When vegetation is left undisturbed by development or land use activities, wind and rain erosion potentials are dramatically reduced and sediments remain on site, rather than washing into wetlands, streams or the stormwater system; and

WHEREAS, water resources that remain free of human-induced sediment loads tend to have lower temperatures, higher dissolved oxygen, lower nutrients and other pollutants, healthier plant communities, higher flows during dry periods and are better able to function during peak flows; all of which conditions are good for fish, wildlife and people; and

WHEREAS, through careful project planning, phasing, timing, construction site management and erosion controls, water resources and the resources that depend on their proper functioning can be protected as development proceeds; and

WHEREAS, the revised erosion control requirements address current best management practices and provide an effective approach to preventing and controlling erosion and sedimentation; and

WHEREAS, after providing due public notice, as required by City Code and State Law, a public hearing was held before the City Council on June 1, 2015, at which time the City Council gathered additional evidence and afforded all interested parties an opportunity to present oral and written testimony concerning the revised erosion control requirements; and

WHEREAS, the City Council has carefully considered the public record, including all recommendations and testimony, and being fully advised;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. The above recitals are incorporated by reference as if fully set forth herein.

Section 2. Based upon such findings, the City Council hereby adopts the amendments to Wilsonville Code, Chapter 3, City Property, and Chapter 8, Environment, as set forth in Exhibit A, attached hereto and incorporation by reference as if fully set forth herein.

Section 3. The City Recorder shall ensure these amendments conform with the City’s code format and to correct any scrivener’s errors.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on June 1, 2015, and scheduled for a second reading at a regular meeting of the Council on June 15, 2015, commencing at 7:00 P.M. at the Wilsonville City Hall.

Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the ____ day of ____, 2015 by the following votes:

Yes: ____ No: ____

Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor the _____ day of ____, 2015.

TIM KNAPP, Mayor

SUMMARY OF VOTES:
Mayor Knapp -
Council President Starr -
Councilor Lehan -
Councilor Fitzgerald -
Councilor Stevens –

Attachment:
Exhibit A

ORDINANCE NO. 769
EXHIBIT A

CODE SECTION AMENDMENTS

1. Wilsonville Code, Chapter 3, Section 3.294 is to be deleted in its entirety.
2. Wilsonville Code Chapter 8, add new Sections 8.536 – 8.576 as follows:

8.536 General Policy

(1) Application and Purpose. It is a City requirement to reduce the amount of sediment and other pollutants reaching public storm and surface water systems resulting from development, construction, grading, excavation, clearing, and any other activity that accelerates erosion, to the limits prescribed herein. These provisions shall apply to all land within the City.

(a) Regulated Activities. To minimize the adverse effects of construction on the environment, Erosion Control Permits are required (unless specifically exempted from this requirement as provided herein) for the following activities:

- 1) All activities requiring a Public Works Permit or a Grading Permit.
- 2) Projects involving construction of public trails, bike paths and pedestrian ways, public or private streets, and underground utilities in existing public rights-of-way or in areas designated in the City's Comprehensive Plan as Significant Resource Overlay Zones.
- 3) All construction projects, including but not limited to capital improvements, Public Works construction and utility installations.

(b) Minimum Requirements:

- 1) No visible or measurable dust, mud, muddy water, or rock shall exit the site, enter the public or private systems or be deposited into any water body.
- 2) Ground-disturbing activities requiring a permit shall install erosion and sediment control (ESC) measures and have them inspected and approved by the City's inspector before any ground breaking occurs.
- 3) During the construction period, these ESC measures shall be upgraded as needed for worst-case storm events and to ensure that sediment and sediment-laden water does not leave the site.

(c) To meet these minimum standards, responsible parties shall:

- 1) As the first step in development, install ESC measures intended to keep soil on site and out of water bodies, storm drainage systems and the public right of way.
 - 2) Remove any soil that enters the public storm system, roadway or right of way.
 - 3) Protect stormwater inlets that are functioning during the course of the project by means of approved ESC measures so that sediment-laden water cannot enter the inlets without first being filtered.
 - 4) Apply permanent or temporary soil stabilization to denuded development areas in conformance with the following schedule:
 - a. Between October 1 and April 30, all inactive denuded sites shall be provided with either temporary or permanent soil stabilization as soon as practicable after ground-disturbing activity occurs. The City will determine whether active construction exists.
 - b. Temporary erosion and sediment control measures to reduce dust and sediment transport shall be applied as soon as practicable before any ground-disturbing activity occurs and immediately when dusty conditions or any transport of sediment occurs.
 - c. Temporary measures shall be maintained until permanent measures are established.
- (d) Temporary and Permanent ESC Measures Required. City policy requires both temporary and permanent ESC measures for any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site.
- (e) If required by the City's authorized representative, construction activities shall be sequenced to reduce the amount and duration of soil exposure to erosion by wind, rain, runoff, and vehicle tracking. The construction schedule is an orderly listing of all major land disturbing activities together with the necessary erosion prevention and sediment control measures planned for a project. This type of schedule guides the applicant on project sequencing so that serious erosion and sedimentation problems can be avoided
- (f) Duties of the Owner/Responsible Party. The Owner's responsible party shall properly install, operate and maintain both temporary and permanent measures as provided in this section and/or in an approved plan, to protect the environment during the term of the project. The responsible party shall also remove temporary erosion controls.

Nothing in these policies shall relieve any person or organization from the obligation to comply with the regulations or permits of any federal, state, or local authority.

8.538 Erosion Prohibited

(1) Visible or measurable erosion as determined by the City's authorized representative, that enters, or is likely to enter public storm or surface water systems is hereby prohibited and is a violation of these rules. The owner of the property and the permittee, together with any person who causes or allows erosion to occur, shall be considered to be in violation of these rules.

(2) In determining measurable erosion, the City will rely on the adopted Water Quality Standard not to be exceeded for the waters of the Willamette Basin (Oregon Administrative Rule 340-41-0340), which currently sets criteria for dissolved oxygen, temperature, turbidity, pH, bacteria, and total dissolved solids.

(3) An off-site sedimentation control facility may be utilized if it has been identified and approved in writing by the City's authorized representative, written approval is obtained from the respective property owner, and a written agreement for rehabilitation of the facility by the applicant or contractor is submitted to the City. The owner of the property or the applicant under a Public Works Permit, together with any person or persons, including but not limited to the contractor or the design engineer causing such erosion, shall be held responsible for violation of the City's standards.

8.540 Erosion Control Permits

(1) Except as noted herein, no person shall cause any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site without first obtaining a permit from the City and paying prescribed fees. Such changes to land shall include, but are not limited to, grading, excavating, filling, working of land, or stripping of soil or vegetation from land.

(2) Any work requiring a Grading Permit, as specified in the applicable Building Code, shall require an Erosion Control Permit, unless specifically exempted from this requirement as specified in subsection 5(C), below. Where a Grading Permit is being issued for on-site work, the Grading Permit will include an Erosion Control Plan.

(3) No owner, utility company or contractor shall begin construction, grading, excavation, fill, or clearing of land without first verifying in writing that the City has issued an Erosion Control Permit covering such work, or the City has determined that no such Permit is required. No public agency or body shall undertake any public works project without first obtaining an Erosion Control Permit covering such work, or receiving a determination from the City that none is required.

- (a) Construction on slopes greater than 5 percent, or on highly erodible soils, shall be subject to limitations or conditions of approval that may limit excavation or other construction from November 1 through April 30.
- (b) Limits of work are to be specified in the Erosion Control Permit.
- (c) The Contractor shall provide a tentative construction schedule and shall notify the City authorized representative at least 24 hours before the start of excavation or construction.
- (4) No Erosion Control Permit (from the City) is required for the following:
 - (a) For work of a minor nature, provided that all of the following criteria are met:
 - 1) The land development does not require a Public Works Permit, a Grading Permit or a development permit, from the City.
 - 2) No land development activity or disturbance of land surface occurs within 100 feet of the Significant Resource Overlay Zone, as defined in the City's Comprehensive Plan.
 - 3) The slope of the site is less than 12 percent.
 - 4) The work on the site involves disturbance of less than 500 square feet of land surface.
 - 5) The excavation, fill, or combination thereof involves a total of less than 20 cubic yards of material.
 - a. Permits and approvals for land division, interior improvements to an existing structure, and other approvals for which there is no physical disturbance to the surface of the land.
 - b. Activities within the City that constitute accepted farming practices as defined in ORS 215.203, and which are permitted by City zoning.
 - c. Exception from the permit requirement does not exempt the property owner from the responsibilities outlined herein.

8.542 Erosion Control Permit Process

- (1) Applications for Erosion Control Permit. Application for a Permit shall include:
 - (a) A grading and erosion control plan that contains methods and interim facilities to be constructed or used concurrently and to be operated during construction to control erosion.

- (b) A site map showing:
 - 1) Existing and adjacent drainage including site run-on, public or private receiving water for drainage leaving the site and developed stormwater conveyance systems and facilities.
 - 2) Natural resource features to be protected on and adjacent to the site.
 - 3) Areas to remain undisturbed by construction activities.
 - 4) Sequence and locations of clearing, grubbing and grading, including stockpile locations, management and schedule of their removal.
 - 5) Locations and types of dust and erosion control facilities for each major project phase.
 - 6) Final landscaping plan, including hard surfaces, sodded or mulched areas, and areas to be seeded, including seed mix, rate, area, broadcast method and date of seeding.
- (c) The grading and erosion control plan shall be designed to meet the requirements herein and shall be prepared using either of the following methods:
 - 1) The techniques and methods contained and prescribed in the Clackamas County Water Environment Services most current version of 'Erosion Prevention and Sediment Control Planning and Design Manual (this document is hereby adopted by reference), together with the City of Wilsonville's exceptions stated herein.
 - 2) The Soil conservation Service's Universal Soil Loss Equation or other equivalent methods established by Board rule to prepare a site-specific plan outlining protection techniques to control soil erosion and sediment transport from the site to less than one ton per acre per year.
- (d) All ESC plans shall include an erosion control legend, erosion control details, both pertaining to the project, and the City of Wilsonville's Erosion and Sediment Control Notes, including the Sediment Fence Notes.
- (e) When required by the City, the Grading and Erosion Control Plan will be designed, approved, and managed by a Certified Professional in Erosion and Sediment Control (CPESE).

8.544 Maintenance

- (1) The owner/applicant shall maintain the facilities and techniques contained in the approved Erosion Control Permit so as to assure that they remain effective during the

construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Permit are not effective or sufficient as determined through site inspection the permittee shall submit a revised plan within three (3) working days of written notification by the City. Upon approval of the revised plan by the City, the permittee shall immediately implement the additional facilities and techniques of the revised plan. Where erosion is occurring, the owner/applicant shall correct control measures immediately. The City will re-inspect for compliance.

8.546 Inspection

(1) Initial and final ESC inspections are required, and ground breaking may not occur until initial inspection has been approved. Tree protection shall be installed, inspected, and approved before any ESC measures are placed. An erosion and sediment control inspection shall not occur until tree inspection and approval has occurred.

8.548 Prevention and Cleanup of Tracks, Spills and Deposits

(1) No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of public or private storm or surface water systems.

(2) Any such deposit of material shall be immediately removed using hand labor or mechanical means.

(3) No material shall be washed or flushed into any part of storm or surface water systems without sediment control measures installed, including cleanup, to the satisfaction of the City.

8.550 Fees for Permit

(1) The City shall collect a fee to defray the costs of review of plans, administration, enforcement, and field inspection to carry out the rules contained herein.

8.552 Exceptions to Erosion Control Techniques and Methods

(1) The erosion control techniques and methods in the Clackamas County Water Environment Services' most current version of "Erosion Prevention and Sediment Control Planning and Design Manual" shall be used, with the following exceptions:

- (a) Gravel or rock construction entrances (two to three inch crushed aggregate) with geotextile fabric shall be required for each construction entrance. An entrance is required for each vehicle access point on each project and entrances shall be maintained for the duration of the project. Additional measures such as a wheel wash may be required to ensure that all paved areas are kept clean for the duration of the project. The owner/applicant is responsible for design and performance of the construction entrance. Under no circumstance shall vehicles or equipment

enter a property adjacent to a stream, water course, wetland or storm or surface water facility such that it would not be possible to avoid contaminating or depositing mud, dirt, or debris into the water or wetland.

- (b) The use of straw bales as silt barriers is prohibited.
- (c) Silt barriers are not required on a site under the following circumstances:
 - 1) Where a Community Erosion Control Plan is in effect.
 - 2) Where there are no concentrated flows and the slope being protected has a grade of less than 2 percent.
 - 3) Where flows are collected by means of temporary or permanent grading or other techniques, such that the flows are routed to an approved settling pond, filtering system, or silt barrier.
 - 4) Where there are no concentrated flows, slopes are less than 10 percent, and where the runoff passes through a grassed area that is either owned by the applicant, or approved for such use in writing by the owner of the grassed area. The grassed area shall be at least equal in dimensions to the area being protected.
 - 5) Where the surface is protected by appropriate ground cover or matting.

(2) **Neighborhood Erosion Control Plan.** Any individual or group may submit a plan to control erosion from multiple lots. This shall be referred to as a “Neighborhood Erosion Control Plan.” In such cases, the group of lots will be evaluated as if they were one lot.

- (a) If an individual lot in a Neighborhood Erosion Control Plan changes ownership, the new owners may either join the Neighborhood Erosion Control Plan (with the approval of the other “neighborhood” owner or owners), or will need to submit their own erosion control plan if erosion potential still exists on the parcel.
- (b) If a lot changes ownership and the new owner does not join the Neighborhood Erosion Control Plan, the Plan shall be revised to provide for the exclusion.

(3) **Protection Measure Removal.** The erosion control facilities and techniques shall remain in place and be maintained in good condition until all disturbed soil areas are permanently stabilized by installation and establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion. Straw or plastic sheeting are to only be used as temporary measures during construction and are prohibited for use as ground cover for final inspection. A final erosion control inspection shall be required prior to any change in ownership of the subject property.

- (4) **Plastic Sheeting.** Plastic sheeting may be used to protect small, highly erodible

areas, or temporary stockpiles of material. If used, the path of concentrated flow from the plastic shall be protected from eroding.

(5) Ground Cover Establishment. On sites where vegetation and ground cover have been removed from more than one (1) acre of land, ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the winter with straw mulch, erosion blankets, or other similar method. Ivy shall not be used as a ground cover for erosion control purposes.

8.554 1200-C and 1200-CN Permits (Construction Stormwater Discharge Permit)

(1) If the site requires a 1200-C permit from the Oregon Department of Environmental Quality (DEQ), an approved copy of the 1200-C Permit shall be submitted to the City before any clearing or grading will be allowed to proceed. Construction activities including clearing, grading, excavation, and stockpiling that will disturb five (5) or more acres and that may discharge to surface waters or conveyance systems leading to surface waters of the state, require a DEQ 1200-C permit. The 1200-C permits are obtained directly from DEQ, and require a public notice period.

(2) A DEQ 1200-CN permit is required for construction activities that disturb between one (1) acre and five (5) acres as part of a common plan of development or sale if the larger common plan of development or sale will ultimately disturb one acre or more and which may discharge to surface waters or conveyance systems leading to surface waters of the state.

8.556 Activities in Wetlands

(1) Both the U.S. Army Corps of Engineers and the Oregon Department of State Lands have permit procedures for construction activities in wetlands that are within the jurisdiction of those agencies. Applicants for an Erosion Control Permit shall be required to demonstrate their compliance with all applicable requirements of those agencies, including any required mitigation.

(2) The construction of underground utilities in wetland areas shall require the use of impermeable barriers, designed and installed in such a manner as to avoid draining the wetlands.

8.558 Work in Flood-Prone Areas

(1) Work in flood-prone areas shall be subject to the requirements of Section 4.172 of the Wilsonville Code and to all applicable Federal Emergency Management Agency flood insurance standards.

8.560 Geotechnical Investigation

(1) Work on slopes exceeding 12 percent that is not exempt from the Erosion Control Permit requirements included herein shall require a written report from a civil engineer with

geotechnical expertise. That report shall verify that the potential hazards of construction in the area have been considered and that adequate measures will be included in design and construction to assure that risks to life, property and the environment will be avoided or mitigated.

(2) Work on slopes greater than 12 percent shall utilize planning and designs that reduce the potential for erosion in the following ways:

- (a) Limit the extent of disturbance of soils.
- (b) Minimize removal of trees and other vegetative cover, meeting all, or exceeding, requirements of the City's Tree Preservation and Protection code (Section 4.600 of the Wilsonville Code).

Provide landscaping plans that include slope stabilization and re-vegetation.

8.564 Maintaining Water Quality

- (1) Construction within the banks of a stream shall be kept to a minimum.
 - (a) In-stream operations and schedule shall be in conformance with the Oregon Department of Fish and Wildlife's (ODF&W) in-water work windows and as approved in writing by the City's authorized representative.
 - (b) Comply with the regulatory requirements of ODF&W, Oregon Department of State Lands, US Fish and Wildlife Service, U.S. Army Corps of Engineers and any other state and federal agencies having jurisdiction.

(2) Construction materials and common construction site pollutants shall be controlled, including: demolition wastes, equipment fluids, concrete waste and slurry, sealants, additives, curatives and rinse water; treated wood, wood preservatives and resins; metal debris; solvents and degreasers; paints, paint thinners and paint rinse water; fertilizers, pesticides and herbicides; batteries, fluorescent lights, PCBs, asbestos, lead and contaminated soils. Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged into or near rivers, streams, impoundments, drainage systems or onto soil.

(3) All sediment-laden water from construction operations shall be routed through stilling basins, filtered or otherwise treated to reduce the sediment load.

(4) Refer to the City's Public Works Standards for design criteria for water quality facilities and their maintenance and operations.

8.566 Fish and Wildlife Habitat

- (1) Construction shall be done in a manner to minimize the adverse effects on

wildlife and fishery resources.

(2) Site Preparation

- (a) Native materials shall be conserved for site restoration; for example native soils shall be re-used to fill soil-wrapped lifts.
- (b) If possible, native materials shall be left where they are found and the disturbance area shall be minimized to the maximum extent practicable.
- (c) Materials that are moved, damaged, or destroyed shall be replaced with the functional equivalent during site restoration.
- (d) Any large wood, native vegetation, weed-free topsoil, and native channel material displaced by construction shall be stockpiled for use during site restoration.

(3) Emergency Measures

- (a) In the event of a major unexpected event (spills, fire, flood, landslide, failure of construction measures or equipment) an assigned project representative will be on site or available by phone at all times.
- (b) Work causing or affected by the event shall cease until the assigned representative provides clearance to proceed. The representative shall contact the appropriate permit representatives (e.g., City, ODF&W, DEQ, Oregon Department of State Lands) as appropriate.

(4) The requirements of local, state, and federal agencies charged with wildlife and fish protection shall be adhered to by the entire construction work force by implementing a plan to communicate Erosion Control Permit and other relevant requirements to all workers.

8.568 Existing Vegetation

(1) As far as is practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to vegetation intended to be protected. Trees shall not be used as anchors for stabilizing construction equipment.

(2) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be re-vegetated, and the vegetation established, as soon as practicable. Ivy shall not be used as a ground cover for erosion control purposes.

(3) Work in areas with one or more trees having a diameter of six or more inches at a height of 4 1/2 feet shall be subject to the applicable standards and requirements of Section 4.600 of the Wilsonville Code.

8.570 Contaminated Soils

(1) In the event the construction process reveals soils contaminated with hazardous materials or chemicals, the Contractor shall:

- (a) Stop work immediately.
- (b) Immediately notify the City's authorized representative, the design engineer, the Oregon Department of Environmental Quality and an emergency response team of the situation upon the discovery of contaminated soils.
- (c) Ensure no contaminated material is hauled from the site.
- (d) Remove his/her work force from the immediate area of the contamination.
- (e) Leave all machinery and equipment on the site.
- (f) Secure the area from access by the public until such a time as a mitigation team has relieved them of that responsibility.

8.572 Underground Utilities (exposed areas) and Construction Access Roads

(1) Utilities that are otherwise located underground, but which are visible where they cross swales, channels, or other intermittent low spots, shall be considered to be underground utilities, as the term is used in this ordinance.

(2) Placement of underground utilities shall not result in dewatering of wetlands.

(3) Ground disturbances created by stream crossings of underground utilities shall be seeded and or planted to appropriate vegetation.

8.574 Severability

(1) If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

8.576 Stormwater - Violation

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PARKS AND PLAYGROUNDS

3.000 Rules & Regulations.

- (1) The following rules and regulations are hereby adopted for the regulation and use of municipal parks in and for the City, and shall be observed at all times by all persons using any City park or park facilities. A summary of these rules are authorized to be posted at Parks and park facilities as determined by the City Manager or designee. *(Amended by Ordinance #425 - April 4, 1994)*
- (2) No fires and camp stoves so shall be allowed except in the following designated areas:
 - (a) Park camp stoves or fireplaces provided for such purposes.
 - (b) Portions of beaches designated as permitting fires, if any.
 - (c) Portable stoves in established campsites, picnic areas, and designated beaches where fires are permitted.

- (d) No fire shall be left unattended and every fire shall be extinguished before user leaves the park area.
- (3) No person shall in any park area except under agreement or special regulations of the Council:
- (a) Hunt, pursue, trap, kill, injure, molest, or disturb the habitat of any bird or animal.
- (b) Discharge any firearm, pellet gun, bow and arrow, slingshot, or other weapon capable of injuring any person, bird or animal; or
- (c) Possess any loaded firearm.
- (4) Flowers, shrubs, foliage, trees or plant life or products of any type shall not be picked, cut, mutilated or removed, from any park area without written permission from the Council.
- (5) No person shall mutilate, deface, damage or remove any table, bench, building, sign, marker, monument, fence, barrier, fountain, faucet, traffic recorder, or other structure or facility of any kind in a parked area.
- (6) No person shall, except under special regulations of the Council, dig up, deface, or remove any dirt, stones, rock, or other substance whatever, make any excavation, quarry any stone, or lay or set off any blast or roll any barrier stones or move any barriers, or cause or assist in doing any of the said things within a parked area.
- (7) No person shall, except in a designated area, erect signs, markers, or inscriptions of any type within a park without permission from the Council.
- (8) No person in a park may without written permission of the Council:
- (a) Operate a concession, either fixed or mobile;
- (b) Solicit, sell or offer for sale, peddle, hock, or vend any goods, wares, merchandise, food, liquids, or services;
- (c) Advertise any goods or services by any means whatsoever; or
- (d) Distribute any circulars, notices, leaflets, pamphlets, or written or printed information of any kind.
- (9) Motor vehicles shall be operated only on roads and in parking area constructed or designated for motor vehicle use. No motor vehicle shall be operated on any trail or in any part of a park area not constructed or designated for motor vehicle use, or on any road or trail posted as closed to the public, or on any road or trail where signs have been placed or erected by

authority of the Council prohibiting the driving of motor vehicles. Automobiles, trailers, or other vehicles shall be parked only in designated areas.

(10) No animal of any kind shall be brought into or kept in a park area unless confined, or in a vehicle. Except that dogs must be kept on a leash at all times in all city parks and playgrounds. The leash shall be no more than eight (8) feet in length, except that a retractable reel leash may extend up to fifteen (15) feet in length. The authority of the City park employee includes the authority to undertake any lawful measures (including removal of the animal from the park area) deemed by the park employee necessary to prevent the interference by the animal with the safety, comfort and well-being of the park users, or the appearance or sanitary condition of the park area. No animals other than seeing-eye dogs shall be allowed in any building.”

(11) No bottles, cans, ashes, waste, paper, garbage, sewage, or other rubbish or refuse shall be left in a park area, except in the receptacles designated for that purpose.

(12) No person shall set up or use a public address system in a park without the written permission of the Council.

(13) No person shall ride, drive, lead, or keep a saddle horse or riding animal in any park area, except on such roads, trails, or areas designated for that purpose. No horse or other animal shall be hitched to any tree or shrub in such a manner that may cause damage to such tree or shrub.

(14) No person shall wash any clothing or other materials or clean any fish in a pond, stream or river in a park area.

(15) No person shall use abusive, threatening, boisterous, vile, obscene or indecent language or gestures in a park area which interferes with another’s peaceful enjoyment of the park and its facilities. Public demonstrations, public disturbances, or riotous behavior or indecent exposure will not be allowed in any City park area. (*Amended by Ordinance #425 - April 4, 1994*)

(16) No overnight camping will be permitted unless authorized in writing by the Council.

(17) No person shall operate any motor vehicle within a park area at a speed in excess of posted limits.

(18) No person shall operate or use any noise producing machine, vehicle, device, or instrument in such a manner that is disturbing to other park area visitors or neighboring houses.

(19) Except for authorized overnight camping in accordance with the City rules and regulations, no person, other than law enforcement officers or authorized City personnel, shall enter or remain in any park area except during posted hours as established by the Council.

(20) A fenced and signed area on the east side of Memorial Park is hereby designated as dog off leash area in which dogs may be allowed to run off leash provided:

- (a) The dog is properly licensed and has received required vaccinations (rabies);

- (b) The dog's owner, or owner's designee:
 - (1) Removes any and all feces excreted by the dog;
 - (2) Keeps the dog within the designated area during all times it is off leash;
 - (3) Secures the dog by adequate leash when entering or leaving the designated area:
 - (4) Does not take a female dog in estrus into a designated area when other dogs are present, or, if already within a designated area, removes such female dog in estrus when other dogs enter the area; and
 - (5) Is present in the designated area and has voice control of his or her dog.
- (c) No dog shall be permitted to fight, bite, or bark excessively while in a designated dog off leash area, and the owner of a dog fighting, biting, or barking excessively may be cited therefore and/or required to remove his or her dog from the area.

(30) A dog owner or owner's designee is required to remove and properly dispose of any and all feces excreted by said dog or dogs in all city parks.

(31) Smoking or the use of tobacco products is prohibited on all City park property, park facilities and buildings. "Tobacco products" includes any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be used for smoking, chewing, inhalation, or other means of ingestion. (Section added by Ord.712 1/7/13)

3.010 Facility Reservation.

- (1) In order to provide for the convenience of advance reservation of park facilities the following procedures are hereby adopted:
 - (a) Formal application must be made at City Hall to reserve any public park and recreation facility for the exclusive use of any particular group.
 - (b) All applications must be made at least two (2) weeks in advance of the date of facility use and shall include the name of the organization/group, the facility requested, date and time and requested, name, address and phone number of person in charge, type of activity and any special requests.
 - (c) Reservation fee shall be paid in advance to assure reservation.
 - (d) The person in charge must sign the application.
 - (e) All applicant for park reservations shall be aware of the fact that reservations for park facilities are on a first-come, first-serve basis.

3.020 Use and Consumption of Alcoholic Beverages.

- (1) Alcohol may not be consumed or used in Wilsonville city parks under the following conditions:

- (a) Alcoholic beverages or their consumption shall be limited to wines or beer only.
- (b) In those areas designated by the City for which a reservation has been permitted and the applicant indicated on the application form that alcoholic beverages would be served. This does not in any way eliminate the reservation applicant from those rules and regulations administered under the Oregon Liquor Control Commission (OLCC). *(Amended by Ordinance #425 - April 4, 1994)*

3.022 Water Safety Regulations

- (1) No person shall swim, dive, or fish ,on or from the Memorial Park dock.
- (2) The ordinance will sunset on the date of the conclusion of the described grant agreement. *(Section 3.022 added by Ordinance No. 752 adopted 12/1/14)*

3.030 Enforcement and Penalty.

- (1) In addition to City Police, all City park employees or Council persons in charge of City parks or any park area are authorized and directed to enforce by all lawful means full compliance by the public with the foregoing rules and regulations. *(Amended by Ordinance #425 - April 4, 1994)*
- (2) Any person violating any park rule or regulation as delineated by Sections 3.000 and 3.020 of this Code, except those involving theft or damage over \$50.00, shall be punished upon a first conviction for a violation pursuant to Section 1.012, and upon a subsequent conviction for a Class C misdemeanor pursuant to Wilsonville Code, Section 1.012. Provided, however, a violation of a park rule which involves theft or damage to property grater than \$50.00 shall be treated as a crime under state criminal laws. Provided further a conviction for violation of Section 3.000(31) shall only be punished as a violation pursuant to Section 1.012. *(Amended by Ordinance #253 - February 21, 1984. Further Amended Ordinance #425 - April 4, 1994) (Amended by Ord. 712 adopted 1/7/13.)*

CITY WATER AND SEWER FACILITIES

3.075 Definitions. *(Added by Ordinance #252 - February 6, 1984)*

- (1) For purposes of Chapter 3, the following words and phrases shall have the meanings ascribed to them in this section:
- (a) Air Gap shall mean the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device, and the flood level of said vessel. An approved air gap shall be at least double the diameter of the supply pipe, measured vertically, above the top of the rim of the vessel; and, in no case, less than one inch (1"). When an air gap is used at the service connection to prevent

the contamination of pollution of the public potable water system, an emergency by-pass shall be installed around the air gap system and a reduced pressure principle device, as approved by the Foundation for Cross-Connection Control and Hydraulic Research, (hereinafter called F.C.C.C.H.R.), shall be installed in the by-pass system.

(b) Appeals Board shall be the City Council.

(c) Auxiliary Water Supply shall mean any water supply on or available to the premises other than the City's approved public potable-domestic water supply. These auxiliary waters may include water from another purveyor's potable water supply or any natural source(s) such as a well, spring, river, stream, harbor, etc., or "used waters" or "industrial fluids." These waters may be polluted or contaminated or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

(d) Backflow shall mean the flow of water or other liquids, mixtures or substances under pressure into the distributing pipes of a public potable-domestic water supply system from any source or sources other than the public potable-domestic water supply source of the City.

(e) Backflow Preventor shall be a device or other means designed to prevent backflow or back-siphonage.

(f) Back-Siphonage shall mean the flow of water or other liquids, mixtures or substances into the distributing pipes of a public potable-domestic water supply system from any source other than the public potable-domestic water source of the City, caused by the sudden reduction of pressure in the public potable water supply system.

(g) BOD (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five (5) days at 20°C, expressed in milligrams per liter.

(h) Building Drain shall mean that part of the lowest horizontal piping of a drainage system which received the discharge from soil, waste and other drainage pipes inside the walls of the buildings and conveys it to the building sewer, beginning five (5) feet (1.5 meters) outside the inner face of the building wall.

(i) Building Sewer shall mean the extension from the building drain to the property or right-of-way line for connection with the public sewer service connection.

(j) Building Water Service shall mean the piping structures and appurtenances from the City-owned meter up to five feet (5') of the structure.

(k) City Administrator shall be as defined in Section 2.105 of the Wilsonville Code.

(l) City Council shall mean the elected Council by charter of the City of Wilsonville.

- (m) City Rules and Regulations shall mean duly promulgated rules and regulations of the City and its duly constructed departments, agents, agencies and employees.
- (n) Combined Sewer shall mean a sewer receiving both surface runoff and sewage.
- (o) Commercial shall mean all buildings or structures which are not classified residential or industrial.
- (p) Contamination shall mean an impairment of the quality of the public potable water by sewage, industrial fluids, or waste liquids, compounds or other materials to a degree which creates an actual hazard to the public health through poisoning or through the spread of disease.
- (q) Cross-Connection shall mean any physical connection or arrangement of piping or fixtures between two other separate piping systems, one of which contains public potable water and the other, non-potable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur in the potable water system. A water service connection between a public potable water distribution system and a customer's water distribution system, which is cross-connected to a contaminated fixture, industrial fluid system or a potentially contaminated supply or auxiliary water system, constitutes one type of cross-connection. Other types of cross-connections may include, but are not limited to, connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or change-over devices, sliding multi-part tubes or solid connections.
- (r) Cross-Connections Control by Containment shall mean the installation of an approved backflow prevention device at the water service connection to any customer's premises where it is physically and economically unfeasible to find and permanently eliminate and control all actual or potential cross-connections within the customer's building water service; or, it shall mean the installation of an approved backflow prevention device on the water service line leading to and supplying a portion of a customer's building water service where there are actual or potential cross-connections which cannot be effectively eliminated or controlled at the point of cross-connection.
- (s) Cross-Connections Controlled shall mean a connection between a public potable water system and a non-potable water system with an approved backflow prevention device properly installed, that will continuously afford the protection commensurate with degree of hazard.
- (t) Customer shall mean any individual, firm, company, corporation, association, society, group or owner who receives water service from the City.
- (u) Director shall mean the Community Development Director for the City of Wilsonville. *(Amended by Ordinance #312 - June 3, 1987).*
- (v) Double Check Valve Assembly shall mean an assembly of two independently operating approved check valves with tightly closing shut-off valves on each side of the check valves, plus properly located test cocks for the testing of each check valve. The entire assembly

shall meet the design and performance specification and approval of a recognized City approved testing agency for backflow prevention devices. To be approved, these devices must be readily accessible for in-line maintenance and testing in a watertight vault for reduction of possible contamination.

(w) Garbage shall be as defined in Section 8.100(c), of the Wilsonville Code.

(x) Hazard, Degree of shall mean an evaluation of the potential risk to public health and the adverse effect of the hazard upon the potable water system.

(y) Hazard - Health shall mean any condition, device or practice in the public water system and its operation which could create or, in the judgment of the superintendent, may create a danger to the health and well-being of the water customer. An example of a health hazard is a structural defect, including cross-connections, in a water supply system.

(z) Hazard - Plumbing shall mean a plumbing type cross connection in a consumer's potable water system that has not been properly protected by a vacuum breaker, air gap separation or backflow prevention device. Unprotected plumbing type cross-connections are considered to be a health hazard.

(aa) Hazard - Pollution shall mean an actual or potential threat to the physical properties of the water system or to the potability of the public or the consumer's potable water system, which would constitute a nuisance or would be aesthetically objectionable or could cause damage to the system or its appurtenances, but which would not be dangerous to health.

(bb) Hazard - System shall mean an actual or potential threat of severe damage to the physical properties of the public potable water system or the consumer's potable water system, or of a pollution or contamination which would have a protracted effect on the quality of the potable water in the system.

(cc) Industrial shall mean all buildings or structures in which a product is manufactured, stored or distributed, or any combination of the above.

(dd) Industrial Fluids System shall mean any system containing a fluid or solution which may be chemically, biologically or otherwise contaminated or polluted in a form or concentration such as would constitute a health, system, pollution or plumbing hazard, if introduced into an approved water system. This may include, but is not limited to, polluted or contaminated waters, all type of process waters and "used waters" originating from the public potable water system which may have deteriorated in sanitary quality, chemicals in fluid form, plating acids and alkalis, circulated cooling waters connected to an open cooling tower and/or cooling towers that are chemically or biologically treated or stabilized with toxic substances, contaminated natural waters such as from wells, springs, streams, rivers, bays, harbors, seas, irrigation canals or similar systems, oils, gases, glycerin, paraffins, caustic and acid solutions and other liquid and gaseous fluids used for industrial, fire fighting or other purposes.

- (ee) Industrial Wastes shall mean the liquid wastes from industrial manufacturing processes, trade or business, as distinct from sanitary sewage.
- (ff) Irrigation Water shall mean the water utilized exclusively for irrigation purposes.
- (gg) Major Sewer Line Extension shall mean the extension of a sanitary sewer mainline that is or will be located within public rights-of-way or dedicated easement.
- (hh) May is permissive.
- (ii) Natural Outlet shall mean any outlet into a water course, pond, ditch, lake or other bode of surface or groundwater.
- (jj) Official shall mean the Building Official or Plumbing Official for the City of Wilsonville. (*Amended by Ordinance #312 - June 3, 1987*).
- (kk) Owner shall mean the person(s) who may hold title to or lease the property for which water service has or will be provided.
- (ll) pH shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.
- (mm) Pollution shall mean the presence of any foreign substance (organic, inorganic or biological) in water, which tends to degrade its quality so as to constitute a hazard or impair the usefulness or quality of water to a degree which does not create an actual hazard to the public health but which does adversely and unreasonably affect such waters for domestic use.
- (nn) Potable - Domestic Water shall mean water which is for human consumption.
- (oo) Properly Shredded Garbage shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half (1/2) inch (1.27 centimeters) in any dimension.
- (pp) Public Sewer shall mean a sewer, either sanitary or storm, in which all owners of abutting properties have equal rights, and is controlled by public authority.
- (qq) Reduced Pressure Principle Device shall mean an assembly of two independently operating approved check values with an automatically differential relief valve between the two check valves, tightly closing shutoff valves on either side of the check valve, plus properly located test cocks for the testing of the check and relief valves. The entire assembly shall meet the design and performance specifications and approval of a recognized City approved testing agency for backflow prevention assemblies, utilizing the methods outlined by the F.C.C.C.H.R. The device shall operate to maintain the pressure in the zone between the two check valves at a level less than the pressure on the public water supply side of the device. At cessation of normal

flow, the pressure between the two check valves shall be less than the pressure on the public water supply side of the device. In case of leakage of either of the check valves, the differential relief valve shall operate to maintain the reduced pressure in the zone between the check valves by discharging to the atmosphere. When the inlet pressure is two pounds per square inch or less, the relief valve shall be open to the atmosphere. To be approved, the devices must be readily accessible for in-line maintenance and testing and be installed in a location where no part of the device will be submerged.

(rr) Residential shall mean buildings or structures which are built to be occupied for living purposes.

(ss) Sanitary Sewer shall mean a City sewer which carries sewage and to which storm, surface, and groundwater are not intentionally admitted.

(tt) Service Connection shall mean the installation which connects the water service line with the building water service, which includes, but shall not be limited to the following: meter, meter box, meter vault, check valves, fittings, seals or other materials to make such connection as deemed necessary by the Superintendent.

(uu) Sewage shall mean a combination of the water carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

(vv) Sewage System shall mean all City-owned facilities for collecting, pumping, treating and disposing of sewage.

(ww) Sewage Treating Plant shall mean any arrangement of devices and structures used for treating sewage by the City.

(xx) Sewer shall mean a pipe or conduit for carrying sewage.

(yy) Shall is mandatory.

(zz) Slug shall mean any discharge of water, sewage, or industrial waste which, in connection with any given constituent or in quantity of flow, exceeds for any period or duration longer than fifteen (15) minutes or more than five (5) times the average twenty-four (24) hour concentration or flows during normal operation.

(aaa) Storm Drain (sometimes termed "Storm Sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling waters.

(bbb) Superintendent shall mean the City Engineer for the City of Wilsonville. (*Amended by Ordinance #312 - June 3, 1987*).

(ccc) Suspended Solids shall mean solids that either float on the surface of, or are in suspension in, water, sewage, or other liquids and which are removable by laboratory filtering.

(ddd) Watercourse shall mean a channel in which a flow of water occurs, either continuously or intermittently.

(eee) Water Department shall mean the Facility Maintenance Division of the Community Development Department. *(Amended by Ordinance #312 - June 3, 1987).*

(fff) Water Main Line shall mean water main lines which are six inches (6") or larger, constructed within a city right-of-way or dedicated easement.

(ggg) Water - Non-Potable shall mean water which is not safe for human consumption.

(hhh) Water Service Line shall mean the water supply system from the water main line to the property line.

3.100 Service Connections and Regulations.

(1) Water will be furnished by the City for potable-domestic, residential, business, community, commercial, industrial and fire protection purposes only. No service will be supplied, or water furnished, to any premises, be it residential, commercial or industrial, except on the written application of the owner or occupant of said premises. Application for the use of water must be made on printed forms to be furnished by the City. All applications must state fully and accurately the purposes for which the water is required and, as a condition for the use of the water, the applicant must agree to conform to the rules and regulations of the Facility Maintenance Division and applicable ordinances and resolutions relating to the use and distribution of water. *(Amended by Ordinance #312 - June 3, 1987)*

(2) The City shall install all service connections of such size and location as a customer requests, provided that such request has been approved by the City Engineer, to assure proper sizing, and other relevant matters. The service shall be installed from the main to a point in the City's right-of-way, easement, or land dedicated for such purposes. Where a curb exists, the service shall be installed from the main to a point between the curb line and the property line of the affected premises. The City shall not be responsible for extending, or the cost of extending, a water service line beyond the meter. All pipes from the meter to the premises must be installed in accordance with good engineering and plumbing practices, with complete on-site plumbing improvements to private property to be approved by the Official of the City, and maintenance to meet standards set by the Uniform Plumbing Specialty Code in existence at the time of maintenance. Extensions of a water service line beyond the meter and to the premises to be served with water, shall be at the property owner's or applicant's expense, and such installations shall conform to all City requirements, and shall first be approved by the official or engineer before connection is made to the City water mains. If a water service line is not already provided at the property line, it shall then be installed under City jurisdiction at the owner's expense. *(Amended by Ordinance #312 - June 3, 1987)*

(3) Water mains, service lines, meters and any other water service facilities shall not be extended onto or installed in private property without prior consent of the City, and not then unless an easement is acquired from the property owner to the City for access to the water line(s) for repair or replacement of those lines in the future. Each water main, service line or meter must also be installed or constructed according to the City of Wilsonville's construction standards (currently referred to as Public Works Standards) prior to acceptance by the City of any water main line or water line easement (*Amended by Ordinance #312 - June 3, 1987*).

(4) The owner or customer shall, at his own risk and expense, furnish, install and keep in good and safe condition, equipment that may be required for receiving, controlling, applying and utilizing water for the building service. The City shall not be responsible for loss or damage caused by the improper installation of the equipment or the negligence or wrongful act of the customer in installing, maintaining, using, operating or interfering with the equipment.

(5) The City shall not be responsible for damage to property caused by a spigot, faucet, valve or other equipment that is open when the water is turned on at the meter, except when caused by the negligence of the City or its employees.

(6) A customer making any material change in the size, character or extent of the equipment or operation utilizing water service or whose change in operations results in a large increase in the use of water, shall immediately give the City written notice of the nature of the change and, if requested by the City, amend his application.

(7) The service connection, whether located on public or private property, is the property of the City and the City reserves the right to repair, maintain and replace it.

(8) In all cases where connections to the City's water supply are to be made for meters larger than one and one-half inches (1-1/2"), an estimate of the charges shall be made by the City Engineer, or designated staff person, upon the filing of the application for such service, and such estimated charges shall be paid to the City Recorder before work is commenced. The building service shall not be connected to the meter by the City until the owner or applicant has completed the following:

(a) All fees have been paid by the applicant for such installations;

(b) The applicant's water service(s) or irrigation services to the proposed meter installation are ready to be connected and all sewer/plumbing is complete;

(c) The approved permitted construction plans indicate the set evaluation for the meter boxes to be installed;

(d) The applicant has staked the meter locations and set the elevation markers for the meter boxes;

(e) The applicant has signed a Hold Harmless Statement which indicates the City will not be responsible for contamination of the water supply on-site by the installation of the meters, and that if any damage occurs after the meter is installed and set, as dated on the return installation form sent to Finance, the applicant shall be billed and be responsible for any repairs. No "Certificate of Occupancy" nor Final Certificate shall be signed by Public Works until such payment is made. *(Amended by Ordinance #312 - June 3, 1987)*

(9) The City may, at any time and without notice, shut off the water supply from the water mains for repairs, extensions or for violations affecting the safety, health and welfare of the citizens of the City. Neither the City nor any officer, official or employee thereof shall be held responsible for damage caused by shutting off said water supply or by a collapsed or broken water main line, or the explosion or collapse of boilers or tanks.

(10) No plumber or other person shall be allowed to make connection to the water mains or other water lines of the City or to make alternations in any conduit, pipe or fixture in connection therewith or on any premise without approval of the Superintendent or Director of the City. Water main lines must be laid at least thirty-six inches (36") deep, water service lines must be a minimum of twenty-four inches (24") deep, and both water main lines and service lines shall be separated from all public sanitary sewer lines by a minimum of eighteen inches (18") vertical distance above and ten feet (10') distance horizontally. Each water service line must be provided with stop cocks and drain plugs and all standpipes or fittings of any kind must be located, anchored and installed so as not to interfere with or endanger the meter.

(11) The City and its officers, officials or employees shall not be held responsible for or liable to any person(s) for any interruptions of water service, depletion or contamination of the City's water source or water supply; and the City and its officers, officials, or employees shall not be held responsible or liable for any injuries to persons or damage to property arising out of or caused by the City's water or water service or for failure to furnish water to any applicant, except such as may be caused by the negligence of the City or its officers, officials or employees.

(12) A water valve shall be required at the end of any water main line as designated by the Director. Each property user or owner, at the time of installation of water mains to or on the owner's property, shall install a valve of proper structural design as required in the City's Public Works Standards at the location designated by the Director to insure less complicated connections to the water mains by future users. The valve shall be installed at the owner's expense.

(13) Water service lines shall not be extended outside the City limits and water shall not be metered or sold outside the City limits, except, however, when the Council may approve and authorize, by motion, the extension of a line or lines for the purpose of furnishing City water or sewer to any property or facility which is owned, used, occupied, leased or operated by any agency or department of Federal, State, County or special district; or a public entertainment facility that is privately owned, or privately-owned property where extension of service is required to alleviate a clearly-defined health, safety or fire condition. The extension of a water or sewer line outside the City limits and beyond the Urban Growth Boundary may be approved

provided that the City Council adopts findings demonstrating substantial compliance with statewide Planning Goals 2, 3, 4, 11 and 14. Any extension outside the City limits shall be subject to 3.116 of this Code and such additional fees as shall be determined from time to time by the City Council to be reasonable and prudent. All water and sewer service user fees, whether permanent or temporary, for any services provided outside the City limits shall be billed at two (2) times the normal rate as previously established by Resolution. Except for publicly-owned property or facilities, all other property owners who receive City services under this section shall execute a Consent to Annexation as shall be provided by the City. *(Amended by Ordinance #312 - June 3, 1987)*

(14) It shall be unlawful for anyone other than an employee or agent of the City in the normal performance of duty to operate water valves and appurtenances connected to the municipal water system. *(Amended by Ordinance #274 - May 20, 1985). (Amended by Ordinance #312 - June 3, 1987).*

3.101 Cross-Connection Control General Policy.

(1) The purpose of this section is to protect the public potable water supply of the City from the possibility of contamination or pollution by isolating, within its customers' internal distribution system(s) or its customers' private water system(s), contaminants or pollutants which could backflow or back-siphon into the public water supply system; and

To promote the elimination or control of existing cross-connections, actual or potential, between its customers' in-plant potable water system(s) and non-potable water system(s), plumbing fixtures and industrial piping system(s); and

To provide for the maintenance of a continuing program of cross connection control which will systematically and effectively prevent the contamination or pollution of all potable water systems.

(2) The Director, or his designee, shall be responsible for the protection of the public potable water distribution system from contamination or pollution due to the backflow or back-siphonage of contaminants or pollutants through the water service connection. If, in the judgment of said Director, or his designee, an approved backflow prevention device is required at the City's water service connection to any customer's premises for the preservation, life, health or safety of the citizens or the water system, the Director, or his designee, shall give notice in writing to said customer to install such an approved backflow prevention device at each service connection to his premises. The customer shall, within forty-eight (48) hours of receipt of notice, install such approved device or devices at his own expense. Failure, refusal or inability on the part of the customer to install said backflow prevention device or devices within the forty-eight (48) hour period, shall cause the City to discontinue service of water to the structure or premises until the backflow prevention system, as approved and inspected by the Director, or his designee, is installed. *(Amended by Ordinance #312 - June 3, 1987).*

(3) No water service connection to any premises shall be installed or maintained by the City unless the water supply is protected by State of Oregon regulations, City Code or any combination thereof. Service of water to any premises shall be discontinued by the City if a backflow prevention device required by the City Code is not installed, tested and maintained, or if it is found that a backflow prevention device has been removed, bypassed, or if an unprotected cross-connection exists on the premises. Water service will not be restored until such conditions or defects are corrected.

(4) The customer's system shall be open for inspection at all reasonable times to authorized representatives of the City to determine whether cross-connections or other structural or sanitary hazards, including violations of the provisions of this chapter, exist. When such a condition becomes known, the Director, or his designee, shall deny or immediately discontinue service to the premises by providing for a physical break in the service line until the customer has corrected the condition(s) in conformance with State statutes and City Code relating to plumbing and water supplies and any regulations adopted pursuant thereto.

(5) (a) An approved backflow prevention device shall also be installed on each service line to a customer's water system at or near the property line or immediately inside the building being serviced, but, in all cases, before the first branch line leading off the service line wherever any of the conditions listed in 1 - 4 below exist. All backflow prevention devices shall be installed under the supervision of the Director, or his designee, and the responsibility for all costs for the installation of any backflow prevention devices required by the Director, or his designee, shall be that of the owner(s). Situations which require specific backflow prevention devices include, but are not limited to, the following examples:

- 1) In the case of premises having two or more floors, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the building service line that is appropriate for the degree of hazard.
- 2) In the case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality, and which is not acceptable as an additional source by the Director, or his designee, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the building water service that is appropriate for the degree of hazard.
- 3) In the case of premises on which any industrial fluids or other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing a backflow prevention device in the building water service that is appropriate for the degree of hazard. This shall include the handling of process waters and waters originating from the City water system which have been subject to deterioration in quality.
- 4) In the case of premises having internal cross connections that cannot be permanently corrected and controlled, or having intricate plumbing and piping arrangements, or where all portions of the premises are not readily accessible for inspection purposes,

making it impracticable or impossible to ascertain whether or not dangerous cross-connections exist, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line.

(b) The type of protection device required under subsections (1), (2), (3) and (4) above, shall depend upon the degree of hazard which exists and shall be as follows:

1) In the case of any premises where there is an auxiliary water supply as stated in subsection (2) of this section, and it is not subject to subsection (2), the public water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention device.

2) In the case of any premises where there is water or any other substance that would be objectionable but not hazardous to health if introduced into the public water system, the public water system shall be protected by an approved double check valve assembly.

3) In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to create an actual or potential hazard to the public water system, the public water system shall be protected by an air gap separation or an approved reduced pressure principle backflow prevention device or any combination of subsection (b), 1 - 5, as determined by the Director, or his designee. Examples of premises where these dangerous materials exist include, but are not limited to, sewage treatment plants, sewage pumping stations, chemical manufacturing plants, hospitals, mortuaries and plating plants.

4) In the case of any premises where there are "uncontrolled" cross connections, either actual or potential, the public water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention device at the service connection or by any combination n of subsection (b), 1-5, as determined by the Director or his designee.

5) In the case of any premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete in-plant cross-connection survey, the public water system shall be protected against backflow or back-siphonage from the premises by the installation of a backflow prevention device in the water service line. In this case, maximum protection shall be required; that is, an approved air gap separation or an approved reduced pressure principle backflow prevention device or any combination of subsection (b), 1 - 5, as determined by the Director or his designee, shall be installed in each service to the premises.

6) Any backflow prevention device required herein shall be of a "Device" shall mean a device that has been manufactured in full conformance with the standards established by the American Water Works Association, entitled "AWWA C506-78 - Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices," the State Health Division, Chapter 333, Section 42-230, Cross-Connection Control requirements, and has met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California, established

by "Specification of Backflow Prevention Device" #69-2, dated March, 1969, or the most current issue.

(i) Said AWWA and FCCC and HR Standards and Specifications have been adopted by the Water Division of the Public Works Department and the City. Final approval shall be evidenced by a "Certification of Approval" issued by an approved testing laboratory certifying full compliance with said AWWA Standards and FCCC and HR Specifications. The following testing laboratory has been qualified by the City to test and certify backflow preventers: Foundation for Cross-Connection Control & Hydraulic Research University of Southern California University Park Los Angeles, CA 90007
Testing laboratories other than the laboratory listed above will be added to an approved list as they are qualified by the Superintendent and the City.

(ii) Backflow preventers which may be subject to back pressure or back-siphonage that have been fully tested and have been granted a Certificate of Approval by said qualified laboratory, and are listed on the laboratory's current list of "Approved Devices," may be used without further tests or qualifications.

(6) It shall be the duty of the customer/user at any premises where backflow prevention devices are installed, to have certified inspections and operational tests made at least once per year. In those instances where the Director or designee deems the hazard to be great enough, he may require that certified inspections be made at more frequent intervals. These inspections and tests shall be at the expense of the water user or owner and may either be performed by the device manufacturer's representative, by a certified tester approved by the State Health Department. It shall be the duty of the Director or designee to see that these timely tests are made. The customer/owner's and the City's representative may witness the tests, if desired.
(Amended by Ordinance #312 - June 3, 1987)

(7) Whenever the existing device is moved from the present location or requires more than minimum maintenance or when the Superintendent finds that the maintenance constitutes a hazard, the Superintendent shall implement any section of this Code, applicable to the situation. *(Amended by Ordinance #252 - February 6, 1984).*

3.102 Temporary Connections and Bulk Sales of Water.

(1) Charges for water furnished through a temporary service connection or bulk water connection shall be at the established rates for bulk water customers.

(2) The applicant for temporary service or bulk water shall be required:

(a) To pay to the City, in advance, the estimated cost of installing, operating and removing the facilities to furnish the service.

(b) To deposit an amount sufficient to cover bills for water during the entire period temporary service may be used or to establish credit approved by the City.

(c) To deposit with the City an amount equal to the value of equipment loaned by the City. This deposit shall be refundable, less cost of any necessary repairs.

(3) The City will sell bulk water from the City's municipal water supply providing:

(a) The Director or designee determines there is sufficient City water for any requested bulk water sale. *(Amended by Ordinance #312 - June 3, 1987).*

(b) A written application for the purchase is first filed with the Director or designee on such forms as may be prescribed. *(Amended by Ordinance #312 - June 3, 1987).*

(c) The application is first approved by the Director or designee. *(Amended by Ordinance #312 - June 3, 1987).*

(d) The applicant agrees in an application to comply with the terms thereof and the provision of this section of the Code, and to pay in full the total purchase price for the water purchased and within the time limited therefor. *(Amended by Ordinance #312 - June 3, 1987)*

(4) Temporary connections are to be utilized prior to the final or occupancy permit issuance or final connection of the permanent meter, whichever the case may be. All charges for water used under a temporary service shall be computed through bulk water permits.

(5) No bulk water is to be transported or used outside the City limits unless approval is granted by the City Council or its designee. All connections to the City water or fire hydrants for the purchase of bulk water shall be made at such time and place as directed by the Director or designee, or designated staff person, and the connection location shall be indicated on the application form. Connections shall be made with an appropriate hydrant valve which shall either be furnished pursuant to Section 3.102(2)(a) or by the owner if approved by the Director or Designee. *(Amended by Ordinance #312 - June 3, 1987).*

(6) The customer shall use all possible care to prevent damage to the meter or other equipment loaned by the City to the owner. The owner shall give the City forty-eight (48) hours notification of completion of utilization of equipment loaned by the City. The City shall then remove equipment and make necessary billing preparations. If the meter or other equipment is damaged, the cost of making repairs shall be paid by the owner or customer.

(7) Temporary service connections and bulk water permits have a maximum service time of ninety (90) days. Any additional time will necessitate an extension through reapplication to the Water Department of the City. *(Amended by Ordinance #252 - February 6, 1984).*

3.103 Meters.

(1) Meters shall be furnished and owned by the City. All expenses for meter installation shall be that of the owner.

(2) Meters shall be sealed by the City at the time of installation and no seal shall be altered or broken except by the Superintendent or designated staff person.

(3) If a change in meter size and service is required, the installation shall be accomplished on the basis of a new connection.

(4) Water service lines of suitable size shall be furnished by the City upon prepayment of the water service connection and installation charges. The City shall furnish all labor and materials necessary for the connections, including tapping of mains, installation of corporation stops, meters, meter boxes, connections, backflow prevention devices where specified by the Director, and the pipe or tubing that may be necessary. Sizes of meters, pipes and other materials to be used in water service connections and installation shall first be approved by the Director or his designee. Water service connection, from the main to the meter, shall be maintained by the City without further costs to any specific water customer after the proper final inspections and warranty periods for the service installation have been completed. (*Amended by Ordinance #312 - June 3, 1987*).

(5) Meter installations:

(a) Residential - single family:

1) A separate meter shall be installed for each family residence for public potable-domestic use.

(b) Residential multi-family; includes apartments, townhouses, condominiums, duplexes, four-plexes and similar housing:

1) Rental Units:

a) A separate meter shall be required for each building or structure which has need for public potable-domestic water supply, unless a homeowner's association shall, in writing, verify continuous payment of the water charge, but in no event shall not less than one meter per building or structure be installed.

b) A separate meter shall be required for the irrigation system which shall also have a separate distribution line other than the public potable-domestic supply. The irrigation supply can be connected from the potable service with proper backflow preventor as specified by the Superintendent.

c) The owner or customer shall be responsible for payment of all water charges, whether domestic or irrigation, however, where problems of establishing payment responsibilities occur, the owner shall be ultimately responsible for payment.

2) Individually owned units:

a) A separate meter shall be required for each individual unit regardless of how many units are provided per building, unless a homeowner's association shall, in writing, verify continuous payment of the water charge, but in no event shall not less than one meter per building or structure be installed.

b) A separate meter shall be required for the entire project for irrigation purposes, and the irrigation distribution shall be separate from the potable supply.

c) The owner or customer shall be responsible for payment of all water charges whether domestic or irrigation, however, where problems of establishing payment responsibilities occur, the owner shall be ultimately responsible for payment.

(c) Commercial

1) A separate meter shall be installed for each building structure which has need for public potable-domestic water supply.

2) A separate meter shall be required for the entire project for irrigation purposes and the irrigation distributions system shall be separate from the public-domestic or potable supply. The meter can be connected from the public potable water supply, providing a proper backflow preventor is installed as approved by the Superintendent.

3) The owner or customer shall be responsible for payment of all water charges whether domestic or irrigation, however, where problems of establishing payment responsibilities occur, the owner shall be ultimately responsible for payment.

(d) Industrial:

1) A separate meter shall be installed for each building structure which has need for a cosmetic water supply.

2) A separate meter shall be required for the entire project for irrigation purposes and the irrigation distribution system shall be separate from the domestic or potable supply. The meter can be connected from the potable water supply, providing a proper backflow preventor is installed as approved by the Superintendent.

3) The owner or customer shall be responsible for payment of all water charges whether domestic or irrigation, however, where problems of establishing payment responsibilities occur, the owner shall be ultimately responsible for payment.

(6) No electrical ground or television antenna ground shall be permitted to connect to any water service line, water main line or building water service whether on private or public property, due to the possible occurrence of electrolysis of the pipe materials. (*Amended by Ordinance #252 - February 6, 1984*).

3.104 Discontinuation of Service

- (1) The City may refuse to furnish water and may discontinue service to premises where an apparatus, appliance or other equipment using water is dangerous, unsafe or is being used in violation of laws, ordinances or legal regulations or as stated in Section 3.100(11).
- (2) The City does not assume liability for inspection apparatus on the customer's property. The City does reserve the right of inspection, however, if there is reason to believe that an unsafe or illegal apparatus is in use.
- (3) The City may refuse to furnish water and may discontinue service to premises where excessive demand by one customer will result in inadequate service to others, subject, however, to the provisions of subsection (6) of this section.
- (4) The City shall have the right to refuse or to discontinue water service to premises in order to protect itself against fraud or abuse.
- (5) The City may, at any time, discontinue service to a customer/owner on any installed meter when there is evidence that the life, health and safety of the potable-domestic water supply can be affected by allowing the service to continue. Temporary water connection service can be disconnected at any time when the customer/owner is in violation of any section of this Code.
- (6) Where wasteful or negligent water use seriously affects the general service, the City may discontinue the service if such conditions are not corrected within five (5) days after the customer is given written notice.
- (7) Should a customer desire to discontinue water service to premises for a period of not less than one (1) month, notice in writing shall be given to the Water Superintendent and payment shall be made for unpaid charges, if there be any, at the office of the Finance Director. Within twenty-four (24) hours after such notice and payment, the water shall be turned off and shall not be turned on again until completion of a reconnection application. There will be a charge of twenty-five dollars (\$25.00) for this service. No discontinuance of water charges will be made for a period of less than one month or without the notice prescribed in this section. The customer shall be responsible for the minimum use charge as established in the governing resolution for the specific size of service.
- (8) When a service connection to premises has been abandoned or not used for a period of one (1) year or longer, the City may remove it. New service shall be placed only upon the owner applying and paying for a new service connection.
- (9) (a) In addition to City employees or agents, fire hydrants shall be operated by personnel of the Fire Department in performance of their regular duties. Fire hydrants shall not be used for purposes other than fire fighting or by the City for flushing water and sewer mains unless an application for a portable or permanent meter to measure water used for private or public

purposes has been approved by the Director or his designee. Operation of fire hydrants by the use of any wrench other than the standard fire hydrant wrench designated for that purpose is prohibited. *(Amended by Ordinance #312 - June 3, 1987).*

(b) It shall be unlawful for any person(s) to willfully break, dig up, injure, damage or destroy any meter, pipe or water main or any building appurtenance or other facility of the City's water system; or to break, damage or remove any locking seal on a water meter; or to open or cause to be opened, any faucet, valve, or fire hydrant attached to the water mains or service pipes of the water system in any other manner than as provided by the rules and regulations now or hereinafter established by the City. *(Amended by Ordinance #252 - February 6, 1984).*

3.105 General

(1) When a person desires to take an abnormally large quantity of water for filling a swimming pool, log pond or for other purposes, he shall receive permission from the Superintendent prior to taking such water. Permission to take water in unusual quantities shall be given only if the water can be safely delivered and only if other customers can still be provided with an adequate supply of water so that their uses will receive a continuous supply of water in both quantity and minimum pressure to service their connection.

(2) The owner(s) shall be liable for damage to a meter or other equipment or property owned by the City which is caused by an act of the owner(s), tenants or agents. Damage shall include, but not be limited to, damage from the breaking or destruction of seals by the customer on valves or meters, and damage to a meter that may result from hot water or steam from a boiler or heater on the customer's premises. The City shall be reimbursed by the customer for such damage promptly on presentation of a bill.

(3) No water source development or well development for domestic purposes shall be made within the City limits without prior approval from the Director. *(Added by Ordinance #252 - February 6, 1984).*

3.106 Water Rules and Regulations - Penalty.

(1) Any person convicted of violating any provision of Sections 3.100 to 3.104 of this Code, except provisions relating to the payment of water bills and service connection charges, and anyone causing damage to City water hydrants, meters, waterlines or other City property, and anyone using or taking, or attempting to use or take City water from the City water line or hydrant, or other source of City water supply, without an approved permit, shall be guilty upon a first conviction of a violation pursuant to Sections 1.012, and upon a subsequent conviction of a Class B Misdemeanor pursuant to Section 1.011. *(Amended by Ordinance #253 - February 21, 1984).*

(2) Also, the City Administrator may institute and prosecute a civil action in the name of the City for the recovery of damages to City property and/or the taking of City water without payment and/or a permit, and for the City's reasonable attorney's fees as made be allowed by the

trial court having jurisdiction of such matter and reasonable attorneys fees as may be allowable by the appellate court or in the appeal. *(Amended by Ordinance #252 - February 6, 1984).*

3.108 Water Rules and Regulations Water Service Connection Charges.

The Council may from time to time by resolution establish or change water service rates and connection charges, bulk water rates, hydrant connection fees and charges, re-connection charges, equipment use deposits and other necessary fees, charges or deposits, as is reasonable and prudent.

3.110 Authority Intent - General.

Pursuant to the statutes of the State of Oregon and the powers granted by the charter of the City, the City does hereby declare its intention to continue to acquire, own, construct, equip, operate and maintain sanitary sewers, sewage pump stations, sewage treatment plants and outfall sewers; to extend and expand the existing sewerage system of said City; and to construct new systems, reconstruct and repair such existing sanitary sewers, sewage pump stations and sewage treatment plants, as may be deemed proper by the Council.*(Amended by Ordinance #226 - January 6, 1983)*

3.111 Sewer Rules and Regulations Sewer Service Connection Charges

The Council may from time to time establish and change by resolution fees and charges for connection to and use of the sewage disposal system as the Council may deem necessary, in order to provide adequate revenue for the City's sewer department for operation, maintenance and expansion of the City's sanitary sewer system.

3.114 Sewage Collection and Treatment System - Inspectors' Powers.

The Director of Community Development (conforming change, Amend. Ord. #330, 7/5/88) and other duly authorized employees and representatives of the City bearing proper credentials and identification shall be permitted to enter upon all properties for the purpose of inspection in accordance with the preceding sections at such times and during such hours as may be reasonably necessary for such inspections and enforcement of this Code.

3.116 Reimbursement for Extensions of Streets, Water, Storm Drainage and Sewer Lines or Other Utility Services.

(1) If any person, on application and approval, pays the costs of improving a street, water, storm drainage, or sewer facility or any cable or other television, telephone, electrical, natural gas or other utility, to serve the owner's property, and the improvement or utility would be adjacent to or serve other property so that street, water, storm drainage, sewer service, cable or other television, telephone, electrical, natural gas or other utility for either commercial, industrial or domestic use is provided for such other property without further improvement or extension of the lines or utilities, the City shall require the owners of the other property prior to providing street

access, water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility service to such other property, to refund to the person paying the costs of improving the street, water, storm drainage, sewer lines or any cable or other television, telephone, electrical, natural gas or other utility service a pro rata portion of the costs of the extension. The right of the City to require such refunds shall not continue for more than ten (10) years after the date of installation of the improvement, unless, for good cause shown, the City Council authorizes an extension. Refunds are not intended to limit or replace, and are in addition to, any other existing fees or charges collected by the City. The amount to be refunded shall be determined by the council, and such determination shall be final.

Once a determination has been made, the City Recorder shall enter in the docket of City liens a statement of 1) the refund amount upon each particular lot, parcel of land, or portion thereof, together with the fact that, in lieu of lien foreclosure, the City shall require that, prior to providing street access, water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility service to the effected property, the refund amount shall be paid to the City, 2) the date of installation of the extension or improvement, 3) the date such a refund shall continue which is not more than ten (10) years after the date of the installation, and 4) a description of the improvement and the name of the owners. Upon the expiration of the ten (10) year period and without a refund becoming due and owing, the City Recorder shall remove the entry in toto from the city's lien docket.

(2) Any person proposing reimbursement of the costs of improving a street, water, storm drainage, sewer service, or any cable or other television, telephone, electrical, natural gas or other utility which will be adjacent to other property, shall first file with the City Recorder an application, accompanied by a processing fee established by the City Council, which shall include a description and map outlining the improvement areas showing the adjacent properties which can be served from the improvement and the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other similar evidence. The City Recorder shall make a copy thereof and deliver it to the City Engineer who shall inspect the site of the proposed improvement and report in writing to the City Recorder whether or not the improvement is feasible, desirable and necessary for the orderly development and expansion of the city's transportation system, sewage collection, storm drainage, water distribution systems or any cable or other television, telephone, electrical, natural gas or other utility services. Should it be determined by the city's engineer that it is not economically feasible or practical from an engineering study and investigation, the City Recorder shall report such facts to the person who filed the application and return the description and map. To be feasible and desirable for the orderly development and expansion of the city's street, sewer, storm drainage, water systems, or any cable or other television, telephone, electrical, natural gas or other utility services, the City Engineer shall review City-approved plans prepared by the developer, or alternatively, prepare or cause to be prepared all necessary plans and specifications for the proposed project. The City Engineer shall also prepare or cause to be prepared a recommendation to the Council of a refund method to fairly apportion on a pro rata basis the costs of the extension in keeping with subsection (1) above, considering the development potential of adjacent properties, the cost of improvements, prior contributions by property owners, the value of unused capacity, rate making principles employed to finance public improvements and other factors deemed relevant. The

Council may adopt, in whole or in part, the engineer's recommendation, or establish a refund method as it deems appropriate, just and reasonable. Notice and the opportunity for public hearings and challenge to Council action shall be as required by law.

(3) Upon approval by the City Council of the application for the reimbursement for improvement of the street, water, storm drainage, sewer lines, cable or other television, telephone, electrical, natural gas or other utility services, and after preparation of the plans and specifications for the work project, the applicant shall proceed to construct the facility as determined by the City Engineer, or pay to the City Recorder the total estimated costs of the project, including the legal, engineering and supervision costs. In the latter case, the City Recorder shall advertise in a local newspaper once a week for two successive weeks for sealed bid proposals for construction of the improvement project. The bid proposals shall be publicly opened at either a regular or special meeting of the City Council held at least ten (10) days after the first publication for bids. The City Council may waive any irregularity in bidding procedures, reject any or all bids or award a contract to the bidder who, in the opinion of the City Council is best qualified to undertake and perform fully in a satisfactory manner the public improvements which are to be constructed. If there are not any bidders or if all bids are rejected, the City Council may direct the work to be completed either by a City work force or it may award a contract to any person, firm or corporation who, in the opinion of the City Council, is competent and qualified to perform the work in accordance with the plans and specifications. The city may pursue any alternative method of public improvement construction provided in public contracting law. The City Council shall confer with the applicant and obtain his approval before awarding the contract or before deciding to perform the work by the City work force.

(4) Notwithstanding any provisions to the contrary, in the event any utility service is provided pursuant to a franchise agreement, then Council shall direct the work to be completed pursuant to any such franchise agreement.

(5) If, prior to the commencement of construction, an applicant withdraws the application or notifies the City of the desire to abandon the project, the applicant shall pay to the City, in full, its actual costs incurred to that time and including, though not exclusively, all legal and engineering costs.

(6) The applicant may include the City and the application may be made following improvement, but no later than three months after completion and acceptance by the City of the improvement. If the application is filed after construction, the application shall include the actual cost of construction as evidenced by a contract, receipts, bids or other similar documents. In the event the City shall construct or shall pay for the construction of street, water, storm drainage, sewer lines, cable or other television, telephone, electrical, natural gas, or other utility service within privately owned property, and there is no agreement to the contrary, the City shall require the owners of said property prior to providing such street access, water, storm drainage, sewer service, cable or other television, telephone, electrical, natural gas, or other utility services to such property, to refund to the City a pro rata portion of the costs of the extension. The provisions of this section shall apply to the owners of said property the same manner as subsection (1) is applied to the other property owners described therein.

(7) Any street, water, storm drainage, sewer line, cable or other television, telephone, electrical, natural gas, or other utility service extension project which is to be constructed under the provisions of this section shall be done under the supervision and direction of the City Engineer or an engineer employed by the City to supervise such project and in accordance with sections of this Code relating to such matters; and the successful bidder for any such work contract shall furnish to the City a full performance, payment and street restoration bond issued by a corporate surety in an amount and form as may be approved by the City Council. *(Amended by Ordinance #278 – August 19, 1985.)*

(8) Consistent with this section, the City Manager is authorized to adopt, administer and, from time to time, amend rules and regulations necessary to fully administer its terms and shall be entitled Manager’s Rules and Regulations, Administration of Reimbursement Districts. *(Section 3.116 Amended by Ordinance No. 644 – March 3, 2008)*

PUBLIC IMPROVEMENTS

3.200 Street Lighting Types.

(1) Each property in the City shall be included in a Street Light Type as defined by the adopting Resolution.

(2) New street lights to be installed within the city shall be only Sodium Vapor or equivalent luminaries as approved by Council and as provided under Option A of the Portland General Electric Tariff Schedule 91. Any modifications from Option A lighting must first be approved by the City Council.

(3) Application for street lighting service shall be defined in the adopting resolution for rates and installation procedures.

(4) The City Council shall, by resolution, adopt the rate structure for each Street Lighting Type. The rate shall be based on the total street lighting costs as billed by the Company, including any maintenance costs incurred by the city, plus fifteen percent (15%) for the city's administrative costs, shall be added to the proportionate rate for each Street Lighting Type. The billing frequency shall be stated as part of the resolution. The property owner's share of street lighting costs shall be stated separately and included as a part of the city's bill for sewer and/or water utilities. If the owner is not billed for sewer and/or water, a separate bill shall be sent.

(5) Any street lighting billing which is 30 days delinquent shall receive a notice of delinquency. If said billing is not paid within fifteen (15) days of said notice, the City Recorder shall enter in the Docket of the City Liens a statement of the amounts billed upon each particular lot, parcel of land or portion thereof, the name of the owners and the date of entry. Upon such entry in the Lien Docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof, against which such billing has been entered as a lien for such street lighting. All such liens of the City shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the State of Oregon permit except other City of Wilsonville liens. Interest shall be charged at such rate per annum as shall be determined by the City Council on all amounts not paid within fifteen (15) days from the date of the notice of delinquency. After expiration of thirty (30) days from the date of such entry of lien on the Docket of Liens, the City may proceed to foreclose or enforce collection of the billing in the manner provided by the general law of the State of Oregon. *(Modified by Ordinance #304 - October 7, 1986).*

3.202 Street Lighting - Contract by Council.

The Council may, on its own motion, request of and make a contract with the Company for street lighting service for any area of the City and notwithstanding the fact that the property owners or residents of that area have not requested such service. In such cases, the City's street lighting costs for those areas shall be paid as a general expense of the City with funds which are allocated for that purpose.

3.204 Street Lighting - Fund.

The City Recorder shall establish and maintain a "Street Lighting Fund" for deposit of the City's receipts from street lighting bills and for payment of the City's bills to the Company. The City's administrative costs for all street lighting projects shall be calculated and an accounting made before the close of each fiscal year and more often if required by the Council; and after each accounting, the City Recorder shall transfer from the "Street Lighting Fund" to the City's General fund the City's administrative costs incurred during such accounting period for all street lighting projects. Any surplus remaining in the "Street Lighting Fund" at the close of each fiscal year shall be transferred to any City fund or account as determined by the Council and to be used at such times and for such purposes as the Council may direct.

3.210 Index to Procedures for Local Improvements and Special Assessments

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3.212 Initiating Improvements

(1) Whenever the Council shall deem it necessary to make any street, sewer, water line, traffic signal, sidewalk, parking, curbing, drain, or other local improvement defined in ORS 310.140 be paid for in whole or in part by special assessment according to benefits conferred, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer or an engineer retained by the City to make a survey of the improvement and file a written report with the City Recorder and in accordance with Section

3.218 direct the Finance Director to prepare a financial investigation report, or *(Amended by Ordinance #438 - December 5, 1994)*

(2) When owners of 66 2/3% of the property that will benefit by improvements defined in Subsection (1) request by written petition that the Council initiate an improvement, the Council shall declare by resolution that it intends to make the improvement and direct the City Engineer or an engineer retained by the City to make a survey of the improvement and file a written report with the City Recorder and in accordance with Section 3.218 direct the Finance Director to prepare a financial investigation report. Provided, however, that petitioners shall after the Council's declaration and before the Engineer begins his report, deposit with the City a cash deposit or other financial assurances acceptable to the city, in such amount as the City Engineer shall deem reasonable to defray the City's cost of administration, survey, design, preliminary engineering mapping, and any other action necessary to the processing of the request. *(Added by Ordinance #350 - May 15, 1989)*

3.214 Engineer's Report.

Unless the Council directs otherwise, the engineer's report shall contain the following:

(1) A map or plat showing the general nature, location, and extent of the proposed improvement and the land to be assessed for payment of the cost. The map or plat shall include all existing and future improvements reasonably believed necessary to insure the proper functioning of the improvements proposed.

(2) An estimate of the probable cost of the improvement, including engineering, legal, and administrative costs.

(3) An estimate of the unit cost of the improvement to the benefited properties per square foot, per front foot, or another unit, or combination of units, of cost.

(4) A recommendation concerning the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to benefited properties.

(5) A description of each lot, parcel of land, or portion of land to be benefited with names of the record owners and, when readily available, names of contract purchasers as shown on books and records of the Washington and/or Clackamas County Tax Department (s). To describe each lot or parcel of land under provisions of this section, it shall be sufficient to use the tax account number or the map and tax lot numbers assigned to the property by the tax department (s) of Washington and/or Clackamas County. *(Added by Ordinance #350 - May 15, 1989)*

3.218 Financial Investigation Report.

Where Bancroft Bonding is proposed as a means of project financing, in whole or in part, and unless the Council directs otherwise, the Finance Director will prepare a financial investigation report. The report will contain the following:

(1) A statement that the tax assessed real market value of the tax lot is equal to two (2) times the pro rata share of the assessment to be assessed the tax lot for its share of the cost of the improvement; provided, however, if the tax lot is specially assessed or if the benefit from the local improvement upon completion would substantially increase the real market value of the tax lot, then its real market value, inclusive of the improvement's benefit, may otherwise be established by an independent certified appraiser from a list provided by the City and the cost of appraisal shall be borne by the property owner; *(Added by Ordinance #438 - December 15, 1994)*

(2) Number of vacant lots or description of unused lands in area affected;

(3) Number of similar lots held by the city through foreclosure;

(4) Delinquency rate of assessments and taxes in the area;

(5) Real estate value trends in the area;

(6) Tax levy trends and potential financial impact on improvement district;

(7) Conformance of the project to the City's Comprehensive Plan;

(8) Attitude of property owners toward the project;

(9) Status of municipal debt;

(10) Cost of financing;

(11) Credit worthiness of petitioners.
(Added by Ordinance #350 - May 15, 1989)

3.222 Action on Engineer's Report and Financial Investigation Report.

After the engineer's and the financial investigation report are filed with the City Recorder, the Council may by resolution approve the reports or approve them as modified, require the City Engineer or Finance Director to supply additional or different information for the improvement, or abandon the improvement. *(Added by Ordinance #350 - May 15, 1989)*

3.224 Emergencies.

In the event the Council declares by unanimous vote that an emergency exists and that an improvement is essential to the welfare of the City, the procedure described in Sections 3.212 to 3.218 shall be followed, except that the Council may then declare its intention to initiate the improvement at any time and the engineer's report shall be completed and construction work shall commence as soon as is reasonably possible. *(Added by Ordinance #350 - May 15, 1989)*

3.226 Application for Installments Payments.

Application for installment payments shall be in conformance with ORS 223.220 as shall be set forth in the financial investigation report Wilsonville Code 3.218 (1). *(Added by Ordinance #376 - October 15, 1990)*

3.228 Prepayment of Balance and Discharge of Lien: Assessment of Bond Interest Payment Cost Differential.

Any owner of a lot against which the final assessment is made and lien documented, may pay the whole amount of the final assessment in accordance with ORS 223.280. The City Council may provide for the cost to the local improvement of the property owner's prepayment if, at the time of the prepayment, the current local government pool investment rate would not yield a sum sufficient to repay the property owner's pro rata share of the bond interest over the remaining life of the bond. This prepayment cost shall be assessed at the time of prepayment and shall be an amount that when added to the prepayment shall yield at the local government pool rate the property owner's pro rata share of the bond interest for the remaining life of the bond. If the Finance Director determines that at the time of prepayment there is a prudent investment vehicle available to the City which will yield a more favorable rate and reduce the cost to the property owner, then the Finance Director may use such an investment vehicle in lieu of the local government pool. *(Added by Ordinance #438 - December 5, 1994)*

3.230 Resolution and Notice of Hearing.

After the council has approved the engineer's report and financial investigation report as submitted or as modified, the Council shall declare by resolution that it intends to make the improvement. The City Recorder shall forthwith give notice of the proposed improvement by posting the notice in the City Hall and by sending a copy of the notice by certified mail, addressed to the last known address of the person currently assessed for the properties to be benefited as shown by the records of the Washington and/or Clackamas County Assessor (s), that a hearing will be held to hear objections, if any to the proposed improvement.

The notice must be mailed and posted at least ten days prior to the hearing.

The notice shall contain the following information and such other information that may be necessary to explain the improvement and procedure:

- (1) A brief description of the project;
- (2) The intent to improve;
- (3) Estimated total cost and cost to each property of the improvement;
- (4) Date, time, and place of the hearing;

(5) Right to present objections or support to the project at the hearing.

(Added by Ordinance #350 - May 15, 1989)

3.234 Manner of Doing Work.

The Council may provide in the improvement resolution that the construction work may be done in whole or in part by the City, by contract, by another governmental agency, or by a combination thereof. *(Added by Ordinance #350 - May 15, 1989)*

3.238 Hearing.

If remonstrances are received from or made by owners representing 2/3 or more of the area to be assessed, the improvement proceeding shall be abandoned and shall not be subject to further hearing for at least three (3) months. If remonstrances are less than the amount required to suspend the proposed improvement, the Council may by motion at the time of the hearing or within 120 days thereafter order the improvement carried out in accordance with the resolution. *(Added by Ordinance #350 - May 15, 1989)*

3.242 Call for Bids.

The Council may direct the City Engineer to prepare plans, specifications and then advertise for bids for construction of all or part of the improvement project. If part of the improvement work is to be done under contract bids, the Council shall proceed in accordance with procedures of state law for public contracting. *(Added by Ordinance #350 - May 15, 1989)*

3.246 Assessment Method and Alternative Methods of Financing.

(1) The Council, in adopting a method of assessing the cost of the improvement, may:

(a) Use any just and reasonable method to determine the extent of an improvement district consistent with benefits derived.

(b) Use any just and reasonable method to apportion the sum to be assessed among the benefited properties.

(c) Authorize payment by the City of all or part of the cost of an improvement when in the opinion of the Council the topographical or physical conditions, unusual or excessive public travel, or another character of the work warrant only partial payment or no payment of the cost by owners of benefited properties. Such authorized payment by the City of a part of the cost of the improvement shall be stated in a fixed dollar amount.

(2) If some lots in a subdivision are of questionable marketability, the City may require security from the owner prior to award of bids or project construction. Such security may be, but is not limited to, a bond or deposit of collateral. *(Added by Ordinance #350 - May 15, 1989)*

(3) The Council may elect to provide Bancroft bonding to all or any part of the improvement project. The balance of the project not Bancrofted must be secured to the City in a form acceptable to the City Finance Director prior to award of bids or project construction.

(4) Nothing contained in this section shall preclude the Council from using other means of financing improvements, including federal and state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or other legal means of financing. If other means of financing are used, the Council may levy special assessments according to benefits derived to cover any remaining cost. *(Added by Ordinance #350, May 15, 1989)*

3.250 Assessment Ordinance.

(1) After the work is done and the cost has been actually determined, the Council shall decide whether the benefited property or properties shall bear all or a portion of the cost. The Finance Director shall prepare the proposed assessment for each lot within the assessment district and file the assessments in the city recorder's office.

(2) Notice of the proposed assessment shall be mailed to the owner of each lot proposed to be assessed at the address shown on the Washington and/or Clackamas County Tax Assessor's roll. The notice shall state the amount of assessment proposed on the property and fix a date for a public hearing.

(3) At the hearing, the Council shall:

(a) Consider objections and may adopt, correct, modify, or revise the assessment against each lot or parcel in the district according to special and peculiar benefits accruing to it from the improvement.

(b) By ordinance, allocate the assessment in the manner deemed by the Council to be most equitable. *(Added by Ordinance #350, - May 15, 1989)*

3.254 Notice of Assessment.

(1) Within 10 days after the ordinance levying assessments has been passed, the City Recorder shall send a notice of assessment to each owner of assessed property by registered or certified mail.

(2) The notice of assessment shall include the name of the property owner, a description of the assessed property, the amount of the assessment, and the effective date of the assessment ordinance, and shall state when interest will begin to accrue on the assessment. The property will be subject to foreclosure unless the owner either makes application within 10 days to pay the assessment in semi-annual installments not to exceed 30 years as the City Council shall determine, together with any interest thereon on the unpaid assessment and administrative costs

as the City Council shall determine, or pays the assessment in full within 30 days after the effective date of the assessment ordinance. *(Added by Ordinance #350 - May 15, 1989)*

3.258 Lien Records and Foreclosure Proceedings

(1) After the assessment ordinance is adopted, the City Recorder shall enter into the docket of liens a statement of the amount assessed on each lot, parcel of land or portion of land, a description of the improvement, names of property owners, and the effective date of the assessment ordinance. On entry into the lien docket the amounts shall become liens and charges on the lots, parcels of land or portions of land that have been assessed for improvement.

(2) Assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as state law permits.

(3) Thirty days after the date of the assessment ordinance, interest shall be charged at a rate to be determined by the Council, and the city may foreclose or enforce collection of assessment liens in the manner provided by state law. *(Added by Ordinance #350 - May 15, 1989)*

(4) Assessment liens that have been Bancrofted in accordance with Oregon Bancroft Bonding Act and become one year delinquent are subject to foreclose and penalty and interest charges, as prescribed in Oregon Revised Statutes.

(5) The City may enter a bid on property being offered at a foreclosure sale. The City bid shall be prior to all bids except those made by persons who would be entitled under state law to redeem the property. *(Added by Ordinance #350 - May 15, 1989)*

3.262 Error in Assessment Calculation.

Claimed errors in the calculation of assessments shall be called to the attention of the Finance Director who shall determine whether there has been an error. If there has been an error, the Finance Director shall recommend to the Council an amendment to the assessment ordinance to correct the error. On enactment of the amendment, the City Recorder shall make the necessary correction in the docket of liens and send a corrected notice of assessment by registered or certified mail. *(Added by Ordinance #350 - May 15, 1989)*

3.266 Supplemental Assessments.

If an assessment is made before the total cost of the improvement is determined, and if the amount of the assessment is insufficient to defray expenses of the improvement, the Council may declare the insufficiency by motion and prepare a proposed supplemental assessment. The Council shall set a time for hearing objections to the supplemental assessment and direct the city recorder to provide notice as required in Section 3.320. After the hearing, the Council shall make a just and equitable supplemental assessment by ordinance, which shall be entered in the docket of liens as provided by Section 3.250. Notice of the supplemental assessment shall be mailed,

and collection of the assessment shall be made in accordance with Sections 3.254 and 3.250.
(Added by Ordinance #350 May 15, 1989)

3.270 Rebates.

On completion of the improvement project, if the assessment previously levied on any property is found to be more than sufficient to pay the cost of the improvement, the Council shall determine the excess and declare it by ordinance. When declared, the excess amounts must be entered in the lien docket as a credit on the appropriate assessment. If an assessment has been paid, the person who paid or that person's legal representative shall be entitled to payment of the rebate credit. *(Added by Ordinance #350 - May 15, 1989)*

3.274 Remedies.

Subject to curative provisions of Section 3.282, and rights of the City to reassess as provided in Section 3.286, proceedings for writs and review and other appropriate equitable or legal relief may be filed as provided by state law. *(Added by Ordinance #350 - May 15, 1989)*

3.278 Abandonment of Proceedings.

The Council may abandon proceedings for improvements made under Sections 3.210 to 3.294 at any time before final completion of the improvements. If liens have been placed on property under this procedure, they shall be canceled, and payments made on assessments shall be refunded to the person who paid them or to that person's legal representative. In the event the improvement was initiated by the city under Section 3.212(1), such refund shall be made, together with interest not to exceed the legal rate of interest, from the date the refunded assessment was initially paid to the city. *(Added by Ordinance #350 - May 15, 1989)*

3.282 Curative Provisions.

- (1) An improvement assessment shall not be rendered invalid by reason of:
 - (a) Failure of the engineer's report to contain all information required by Section 3.218.
 - (b) Failure to have all the required information in the improvement resolution, assessment ordinance, lien docket, or notices required to be published and mailed.
 - (c) Failure to list the name of or mail notice to an owner of property as required by this ordinance.
 - (d) Any other error, mistake, delay, omission irregularity or other act, jurisdictional or otherwise, in the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect on the person complaining.

(2) The Council shall have the authority to remedy and correct all matters by suitable action and proceedings. *(Added by Ordinance #350 - May 15, 1989)*

3.286 Reassessment.

When an assessment, supplemental assessment, or reassessment for an improvement made by the City has been set aside, annulled, declared, or rendered void, or its enforcement restrained by a court of this state or by a federal court having jurisdiction, or when the Council doubts the validity of the assessment, supplemental assessment, reassessment, or any part of it, the Council may make a reassessment in the manner provided by state law. *(Added by Ordinance #350 - May 15, 1989)*

3.290 Reapportionment of Assessments.

(1) Property in single ownership at the time of the initial hearing at which the City acquires jurisdiction to perform a public improvement need not be divided by the City for the purpose of levying assessments except when the City received actual notice of the division of ownership of such property prior to the enactment of the assessment ordinance. After an assessment has been levied upon contiguous property in single ownership as provided in this section, there shall be no division or reapportionment of the assessment lien except under the following procedure:

(a) The owner of all or any portion of a parcel of contiguous land subject to a single assessment may make application to the Finance Director for a division and reapportionment of the assessment; and such application shall contain a legal description of each parcel of land into which the property is proposed to be divided together with the name and address of each of the owners and other parties having an interest in such property.

(b) The Finance Director shall prepare a written report reapportioning the assessments within fifteen (15) working days of receipt of the application with recommendations to the City Council. The Finance Director shall mail the report to each owner or party having an interest in the property being reapportioned and shall include notice of the time that the City Council shall hear the recommendations.

(c) The Finance Director shall make no recommendation for reapportionment of an assessment which will impair the security of the City for collection of the assessments upon the property, and provided further no recommendation for reapportionment of an assessment shall be made unless all installment payments are current. The Finance Director may recommend to Council conditions upon such reapportionment's for the protection of the City. *(Amended by Ordinance #376 - October 15, 1990)*

(d) The City Council by resolution shall adopt, modify, or deny the recommendations made by the Finance Director on reapportionment.

~~3.294 — Public Works Standards. —~~

~~(1) — The "Standard Specifications for Public Works Construction in the City of Wilsonville, Oregon," as amended 1981, is hereby adopted as the Public Works standards for the City. All work done and materials used for public improvements in the City shall conform to such specifications unless otherwise provided for in the particular specification for work authorized by the Council.~~

~~(2) — Not less than three (3) copies of the "Standard Specifications for Public Works Construction in the City of Wilsonville, Oregon" shall be kept and maintained on file in the office of the City Recorder for use and examination by the public.~~

~~(3) — Any person violating any provisions of this section shall be punished upon a first conviction for a violation pursuant to Section 1.012, and upon a subsequent conviction for a Class C Misdemeanor pursuant to Section 1.011. Each day of any violation constitutes a separate offense. (Amended by Ordinance #253 — February 21, 1984)~~

~~(4) — The City Manager and/or City Council may authorize and direct the City Attorney to institute and prosecute in the name of the City in the courts of this state an appropriate suit or action to enjoin violations or threatened violations of this section, or to recover fees chargeable pursuant to this section. In case of any such civil suit, action, or appeal therefrom, the City shall be entitled to recover its costs and disbursements incurred therein and reasonable attorneys' fees as may be fixed by the court in such suit, or action, or appeal.~~

~~Section 1. — General Policy~~

~~A. — All projects involving the construction of public trails (including bike paths and pedestrian ways), public or private streets, and underground utilities in existing public rights-of-way or areas designated as Primary Open Space in the City's Comprehensive Plan shall require the issuance of a Public Works Permit, unless specifically exempted from this requirement as provided herein. Public Works Permits required as specified herein shall include Erosion Control Permits. It is the policy of the City to require temporary and permanent measures for all construction projects, including but not limited to capital improvements, Public Works construction and utility installations, to minimize the adverse effects of construction on the environment. The responsible party shall properly install, operate and maintain both temporary and permanent measures as provided in this section and/or in an approved plan, to protect the environment during the term of the project. In addition, these policies shall apply to all properties within the City, regardless of whether the property is involved in a construction or development activity.~~

~~B. — Nothing in these policies shall relieve any person or organization from the obligation to comply with the regulations or permits of any federal, state, or local authority.~~

~~C. — All projects involving the construction of public trails (including bike paths and pedestrian ways), public or private streets, and underground utilities at locations other than public rights-of-way or Primary Open Spaces shall require the issuance of an Erosion Control Permit, unless specifically exempted from this requirement as provided herein. The following~~

~~paragraphs specify the use of erosion prevention techniques, sediment control measures and other measures to protect the environment. The use of erosion prevention techniques shall be emphasized, rather than sediment control measures. This is especially important on larger construction sites immediately before and during the rainy portion of the year. Erosion prevention techniques are designed to protect soil particles from the forces of water and wind so that they will not erode. These techniques include such things as construction scheduling, ground cover, and matting. Sediment control measures are designed to capture soil particles after they have been dislodged and attempt to retain the soil particles on site. These measures include such things as silt fences and settling basins. Both erosion prevention techniques and sediment control measures have appropriate uses. However, numerous case studies have shown that sediment control measures are less effective in preventing soil movement than erosion prevention techniques.~~

~~Section 2. Public Meetings for Projects Involving Primary Open Space~~

~~A. On projects involving the construction of trails, streets, or underground utilities directly affecting three or more tax lots, in areas designated as Primary Open Space in the City's Comprehensive Plan, applicants shall notify the owners of properties within 250 feet of the proposed project, as listed on the County Assessor's records provided to the City. A copy of this notice shall also be placed as either a legal or display advertisement in a newspaper of general circulation in Wilsonville. The required mailed notice and the newspaper advertisement shall include a map and a description of the proposed project and shall state that anyone in the vicinity may request a public meeting by filing such a request, in writing, with the City Engineering Division, not more than ten days after the postmarked or published date of the notification. The receipt of a written request for a public meeting shall cause the City Engineer to delay the issuance of a Public Works Permit for the proposed project until the owners of property in the vicinity can again be notified and a public meeting conducted to review the proposed project with interested persons, and allowing for the preparation of responses to concerns that may be raised in the public meeting.~~

~~1) Failure of any party to receive written or published notice shall not invalidate the process. However, the applicant shall provide a signed affidavit listing the names and addresses of those to whom the invitation was sent and an affidavit listing the newspaper and publication date.~~

~~2) If the City Engineer determines that a sufficient effort has not been made to contact neighboring property owners, the City Engineer may require the applicant to schedule another meeting and improve the public notification.~~

~~3) Public meetings may be conducted in City offices, with proper scheduling. The applicant shall be responsible for conducting the meeting, preparing minutes of the meeting, and shall prepare a written response to any and all concerns raised by the public in the meeting. That written information shall be provided to the City Engineer with the application for a Public Works Permit. The applicant shall specifically address each comment raised and~~

~~shall indicate any changes to the proposed project that resulted from comments received from the public.~~

~~B. Exemptions from public meeting requirement. The following are exempt from the requirement of a public meeting listed above:~~

~~1) Projects where a public hearing has already been conducted by the City's Development Review Board, Planning Commission, or City Council on the proposal;~~

~~2) Projects where a public meeting has already been held and the owners of property within the neighborhood were invited to participate in that meeting, as provided in section 2, above;~~

~~3) Repairs to existing facilities;~~

~~4) Maintenance of existing facilities;~~

~~5) Individual underground utility service to not more than two tax lots;~~

~~6) Projects conducted entirely within existing, publicly owned right of way;~~

~~7) Emergency measures needed to protect lives or property.~~

~~Section 3. Erosion Control~~

~~Application and Purpose. It is a City requirement to reduce the amount of sediment and other pollutants reaching the public storm and surface water system resulting from development, construction, grading, excavating, clearing, and any other activity which accelerates erosion, to the limits prescribed herein. These provisions shall apply to all land within the City.~~

~~Section 4. Erosion Prohibited~~

~~Visible or measurable erosion as determined by the City Engineer, or the City Engineer's agent, which enters, or is likely to enter, the public storm or surface water system, is hereby prohibited, and is a violation of these rules. The owner of the property, the permittee under a Construction Permit Agreement, together with any person who causes or allows erosion to occur, shall be considered to be in violation of these rules.~~

~~In determining measurable erosion, the City will rely on the adopted Water Quality Standard that are not to be exceeded for the waters of the Willamette Basin (OAR 340-41-445). They currently include standards for dissolved oxygen, temperature, turbidity, pH, bacteria, and total dissolved solids.~~

~~Section 5. Erosion Control Permits~~

~~A. — Except as noted herein, no person shall cause any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site without first obtaining a permit from the City and paying prescribed fees. Such changes to land shall include, but are not limited to, grading, excavating, filling, working of land, or stripping of soil or vegetation from land. Any work requiring a Grading Permit, as specified in the applicable Building Code, shall require an Erosion Control Permit, unless specifically exempted from this requirement as specified in subsection 5(c), below. Where a Grading Permit is being issued for on-site work, the Grading Permit may include the Erosion Control Permit.~~

~~B. — No utility company or contractor shall begin construction, grading, excavation, fill, or the clearing of land without first verifying in writing that the City has issued an Erosion Control Permit covering such work, or the City has determined that no such Permit is required. No public agency or body shall undertake any public works project without first obtaining an Erosion Control Permit covering such work, or receiving a determination from the City that none is required.~~

~~1) — Construction on slopes greater than 5%, or on highly erodible soils, shall be subject to limitations or conditions of approval that may limit excavation or other construction from November 1 through April 30.~~

~~2) — Limits of work are to be specified in the Erosion Control Permit. The Contractor shall provide a tentative construction schedule and shall notify the City Engineer's office at least 24 hours before the start of excavation or construction.~~

~~C. — No Erosion Control Permit (from the City) is required for the following:~~

~~1) — For work of a minor nature, provided that all of the following criteria are met:~~

~~a) — The land development does not require a Grading Permit or a development permit, from the City, and~~

~~b) — No land development activity or disturbance of land surface occurs within 100 feet of a Primary Open Space, as defined in the City's Comprehensive Plan, and~~

~~c) — The slope of the site is less than 12 percent, and~~

~~d) — The work on the site involves the disturbance of less than 500 square feet of land surface, and~~

~~e) — The excavation, fill, or combination thereof involves a total of less than 20 cubic yards of material.~~

~~2) Permits and approvals for land division, interior improvements to an existing structure, and other approvals for which there is no physical disturbance to the surface of the land.~~

~~3) Activities within the City which constitute accepted farming practices as defined in ORS 215.203, and which are permitted by City zoning.~~

~~4) Exception from the permit requirement does not exempt the property owner from the responsibilities outlined herein.~~

~~Section 6. Erosion Control Permit Process~~

~~A. Applications for Erosion Control Permit. Application for a Permit shall include a grading and erosion control plan which contains methods and interim facilities to be constructed or used concurrently and to be operated during construction to control erosion. The grading and erosion control plan shall meet the requirements herein. The grading and erosion control plan shall be prepared using either of the following methods:~~

~~1) Using the techniques and methods contained and prescribed in the Erosion Prevention and Sediment Control Plans Technical Guidance Handbook, City of Portland and Unified Sewerage Agency, Revised, February 1994, together with the exceptions herein. This document is hereby adopted by reference.~~

~~2) A site specific plan outlining the protection techniques to control soil erosion and sediment transport from the site to less than one ton per acre per year as calculated using the Soil conservation Service Universal Soil Loss Equation or other equivalent methods established by Board rule. An Erosion Control Information Form (from Appendix B of the Technical Guidance Handbook), shall be filled out for all private developments, public rights-of-way and public works construction sites.~~

~~Section 7. Maintenance~~

~~The applicant shall maintain the facilities and techniques contained in the approved Erosion Control Permit so as to assure that they remain effective during the construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Permit are not effective or sufficient as determined through site inspection, the permittee shall submit a revised plan within three working days of written notification by the City. Upon approval of the revised plan by the City, the permittee shall immediately implement the additional facilities and techniques of the revised plan. In cases where erosion is occurring, the City may require the applicant to install interim control measures prior to submittal of the revised erosion control plan.~~

~~Section 8. Inspection~~

~~———— Prior to the foundation inspection of a building, the permittee shall call the City for an inspection of the erosion control measures for that property. On a site development project, the erosion control measures shall be installed prior to the start of any excavation work.~~

~~Section 9. — Physical Erosion~~

~~———— No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of the public storm and surface water system, or any part of a private storm and surface water system. Any such deposit of material shall be immediately removed using hand labor or mechanical means. No material shall be washed or flushed into any part of the storm and surface water system without erosion control measures installed to the satisfaction of the City and any such action shall be an additional violation.~~

~~Section 10. — Permit Fee~~

~~———— The City shall collect a fee to defray the costs of review of plans, administration, enforcement, and field inspection to carry out the rules contained herein.~~

~~Section 11. — Exceptions to Erosion Control Techniques and Methods~~

~~———— The erosion control techniques and methods in the Erosion Prevention and Sediment Control Plans — Technical Guidance Handbook dated February 1994 may be used, with the following exceptions:~~

~~A. — A gravel construction entrance shall be required, rather than an option. If there is more than one vehicle access point, a gravel construction entrance shall be required at each entrance. The responsibility for design and performance of the driveway remains with the applicant. Under no circumstance shall vehicles or equipment enter a property adjacent to a stream, water course, or other storm and surface water facility, or a wetland, such that it would not be possible to avoid contaminating or depositing mud, dirt, or debris into the water or wetland.~~

~~B. — Silt Barriers. The use of straw bales as a silt barrier is discouraged.~~

~~C. — Exceptions to Silt Barrier Requirement. Silt barriers are not required on a site:~~

~~———— 1) — Where a Community Erosion Control Plan is in effect.~~

~~———— 2) — Where there are no concentrated flows and the slope being protected has a grade of less than 2 percent.~~

~~———— 3) — Where flows are collected through the use of temporary or permanent grading or other means such that the flows are routed to an approved settling pond, filtering system, or silt barrier.~~

~~4) Where there are no concentrated flows, slopes are less than 10 percent, and where the run-off passes through a grassed area which is either owned by the applicant, or approved for such use in writing by the owner of the grassed area. The grass area shall be at least equal in dimensions to the area being protected.~~

~~5) Where the surface is protected by appropriate ground cover or matting.~~

~~D. Neighborhood Erosion Control Plan. Any individual or group may submit a plan to control erosion from multiple lots. This shall be referred to as a "Neighborhood Erosion Control Plan." In such case, the group of lots will be evaluated as if they were one lot.~~

~~If an individual lot in a Neighborhood Erosion Control Plan changes ownership, the new owners may either join the Neighborhood Erosion Control Plan (with the approval of the other "neighborhood" owner or owners), or will need to submit their own Erosion Control Plan if erosion potential still exists on the parcel. If a lot changes ownership and the new owner does not join the Neighborhood Erosion Control Plan, then the Plan must be revised to provide for the exclusion.~~

~~E. Protection Measure Removal. The erosion control facilities and techniques shall remain in place and be maintained in good condition until all disturbed soil areas are permanently stabilized by installation and establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion. A final erosion control inspection shall be required prior to any change in ownership of the subject property.~~

~~F. Catch Basin Protection. A filter system may not be used on catch basins in public streets as a part of erosion control plans for development of a single family residential area unless it is a part of a Neighborhood Erosion Control Plan and none of the individual lots are being occupied.~~

~~G. Plastic Sheeting. Plastic sheeting shall generally not be used as an erosion control measure in single family house construction. Plastic sheeting may be used to protect small, highly erodible areas, or temporary stockpiles of material. If used, the path of concentrated flow from the plastic must be protected.~~

~~H. Ground Cover Establishment. On sites where vegetation and ground cover have been removed from more than one acre of land, ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the winter with straw mulch, erosion blankets, or other similar method. Ivy shall not be used as a ground cover for erosion control purposes.~~

~~Section 12. 1200-C Permit (Erosion Control Joint Permit)~~

~~—The Department of Environmental Quality (DEQ) requires permits for construction activities which will disturb five or more acres. The 1200-C permit is required for compliance with the Federal NPDES rules contained in 40 CFR Parts 122, 123, and 124 adopted by EPA November 16, 1990. All persons and organizations involved in construction activities shall comply with all additional requirements specified in that permit.~~

~~Section 13. Activities in Wetlands~~

~~—Both the Army Corps of Engineers and the Oregon Division of State Lands have permit procedures for construction activities in wetlands that are within the jurisdiction of those agencies. Applicants for Public Works Permits shall be required to demonstrate their compliance with all applicable requirements of those agencies, including any required mitigation.~~

~~—The construction of underground utilities in wetland areas shall require the use of impermeable barriers, in such a manner as to avoid draining the wetlands.~~

~~Section 14. Work in Flood Prone Areas~~

~~—Work in flood prone areas shall be subject to the requirements of Section 4.162 of the Wilsonville Code and to all applicable Federal Emergency Management Agency (FEMA) flood insurance standards.~~

~~Section 15. Geotechnical Investigation~~

~~—Work on slopes exceeding 12%, which is not exempt from the Public Works Permit requirements included herein, shall require a written report from a civil engineer with geotechnical expertise. That report shall verify that the potential hazards of construction in the area have been considered and that adequate measures will be included in the design and construction to assure that risks to life, property and the environment will be avoided or mitigated.~~

~~Section 16. Dust~~

~~—Dust shall be minimized to the extent practicable, utilizing all measures necessary, including, but not limited to:~~

- ~~A. Sprinkling haul and access roads and other exposed dust producing areas with water.~~
- ~~B. Applying dust palliatives on access and haul roads.~~
- ~~C. Establishing temporary vegetative cover.~~
- ~~D. Placing wood chips or other effective mulches on vehicle and pedestrian use areas.~~

~~E. — Maintaining the proper moisture condition on all fill surfaces.~~

~~F. — Prewetting cut and borrow area surfaces.~~

~~G. — Use of covered haul equipment.~~

~~Section 17. — Maintaining Water Quality~~

~~A. — Construction within the banks of a stream shall be kept to a minimum.~~

~~B. — Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged into or near rivers, streams, impoundments, or drainage systems.~~

~~C. — All sediment laden water from construction operations shall be routed through stilling basins, filtered or otherwise treated to reduce the sediment load.~~

~~Section 18. — Fish and Wildlife Habitat~~

~~A. — The construction shall be done in a manner to minimize the adverse effects on wildlife and fishery resources.~~

~~B. — The requirements of local, state, and federal agencies charged with wildlife and fish protection shall be adhered to by the entire construction work force.~~

~~Section 19. — Existing Vegetation~~

~~A. — As far as is practicable, the existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage. Trees shall not be used as anchors for stabilizing working equipment.~~

~~B. — Where existing vegetation has been removed, or the original land contours disturbed, the site shall be re-vegetated, and the vegetation established, as soon as practicable. Ivy shall not be used as a ground cover for erosion control purposes.~~

~~C. — Work in areas with one or more trees (having a diameter of six or more inches at a height of 4 1/2 feet) shall be subject to the applicable standards and requirements of Section 4.600 of the Wilsonville Code.~~

~~Section 20. — Contaminated Soils~~

~~—————
In the event the construction process reveals soils contaminated with hazardous materials or chemicals, the Contractor shall stop work immediately, ensure no contaminated material is hauled from the site, remove his/her work force from the immediate area of the contamination, leaving all machinery and equipment, and secure the area from access by the public until such a time as a mitigation team has relieved them of that responsibility.~~

~~Contractor shall immediately notify the City and an emergency response team of the situation upon its discovery.~~

~~Section 21. — Underground Utilities (exposed areas)~~

~~—— Utilities that are otherwise located under ground, but which are visible where they cross swales, channels, or other intermittent low spots, shall be considered to be underground utilities, as the term is used in this ordinance.~~

~~Section 22. — Enforcement~~

~~—— Failure to comply with any provision of this Chapter or with any condition of a Permit, shall be deemed a violation of this ordinance and subject to enforcement action pursuant to applicable City ordinance.~~

~~Section 23. — Severability~~

~~—— If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.~~

~~Section 24. — Emergency Enactment.~~

~~—— The matters herein concern the public health, safety and welfare, and in consideration that the construction season has commenced, and in view of prevailing economic conditions, an emergency is declared to exist and this Ordinance shall take effect immediately upon its adoption by the City Council.~~

Right-of-Way and Public Easement Management

3.300 Intent and Scope

- (1) Pursuant to the statutes of the State of Oregon and the powers granted in the Charter of the City, the City Council declares its intent to acquire, own, operate, maintain, and manage rights-of-way and to acquire, maintain, and manage public easements.
- (2) The purpose of this chapter is to provide for the non-discriminatory and competitively neutral management of the public rights-of-way and public easements in the interest of public safety and convenience and the protection of public infrastructure.
- (3) When any of the words or requirements under this chapter are ambiguous and subject to interpretation, they shall be interpreted and applied so as to avoid a violation of federal or state law.
- (4) If any section, sentence, clause or provision in this chapter is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state law, the remainder of this chapter shall not be affected.

3.310 Definitions.

The following definitions shall apply generally to the provisions of this chapter:

- (1) **City.** "City" means the City of Wilsonville, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.
- (2) **City's Authorized Representative.** "City's authorized representative" means the staff or person(s) as designated by the City Engineer to represent the City and/or oversee User's work.
- (3) **City Facilities.** "City Facilities" means City or publicly-owned structures or equipment located within the Right-of-Way or public easement used for governmental purposes.
- (4) **Equipment or Facilities.** "Equipment" or "facilities" means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by User within the right-of-way, public easement, or public utility_easement. By way of example, the terms means any pole, wire, sensor, loop, light, stabilization or "guy" wire, anchor, pipe, conduit, line, main, duct, cable, wire, switch, transformer, valve, antennae or other equipment, including any equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right-of-way or easement. "Facility" includes any item placed in the right of way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

- (5) **Franchise.** "Franchise" means an agreement between the City and User which grants a privilege to use public Right-of-Way, public easement or public utility easements within the City for a dedicated purpose and for specific compensation.
- (6) **Non-City Facilities.** "Non-City Facilities" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way, public easement or public utility easement.
- (7) **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.
- (8) **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way shall not include the airspace above the right-of-Way used for cellular mobile radio service or broadcast television service.
- (9) **Public Easement.** "Public easement" means the space identified within the easement document this is in, upon, above, along, across, over or under the publicly owned and maintained storm, sanitary, or water facility.
- (10) **Public Utility Easement.** "Public utility easement" means the space in, upon, above, along, across, over or under the easement as identified within the easement document. By way of general description, public utility easements are typically created along the border(s) of a tax lot or frontage along public right-of-way and are intended for the use of utility companies and other authorized users to operate, place, relocate and maintain facilities in accordance with city requirements and standards.
- (11) **User.** "User" means a Person that performs Work within the Rights-of-Way, public easement or public utility easements, whether or not a permit is applied for or granted.
- (11) **Work.** "Work" means excavation or fill, or the construction, demolition, installation, replacement, or relocation of Equipment, within the Right-of-Way, public easement or public utility easement.

3.320 Permits.

- (1) **Permit Required.** No Person or User shall occupy or encroach on Right-of-Way, Public Easement or Public Utility Easements, nor store materials in, or perform Work, or place, relocate or maintain facilities located within Right-of-Way or easements without first obtaining a permit from the City. Application for such permit shall include at a minimum proposed construction plans and traffic control plans and shall be accompanied by an

application fee. Permits are not required for routine maintenance or repair of above ground Equipment, the installation of new replacement cables or wires on existing aerial facilities, when the installation, maintenance or repair will not impact vehicular, pedestrian, or bicycle traffic by closing or blocking or partially obstructing a lane of travel and for the installation of individual customer service connections, repairs or maintenance that does not require cutting or breaking of the roadway, curb or sidewalk.

Emergency responses related to existing facilities, in order to prevent service interruptions or the imminent threat of harm to persons and property, may be undertaken without first obtaining a permit; however, the City Engineer shall be notified immediately, or as soon as reasonably possible after cessation of the emergency regarding work performed, or being performed, in the Rights-of-Way.

This permit is labeled a “Right of Way and Public Easement Use Permit.” The City Engineer or City’s authorized representative is authorized to establish application forms, reasonable right-of-way management procedures, terms, and conditions for such permits, approve or deny permit applications, and perform such other acts as provided by this ordinance .

(a) **Determination by City.** The City’s authorized representative shall, within 30 days of receipt of a complete permit application, issue a written determination granting, granting with conditions, or denying the permit in whole or in part. If the permit is denied, the written determination shall include the reasons for denial. The permit shall be evaluated based upon the demonstrated ability of the permit applicant to meet the terms of this chapter, the continuing capacity of the public right-of way or public easement to accommodate the permit applicant’s proposed facilities and the applicable federal, state and local laws, rules and polices. If denied, the applicant may appeal to the City Council.

(b) **Additional Terms and Conditions.** If the public interest warrants, The City Engineer or authorized representative and User may negotiate non-discriminatory additional terms and conditions regarding the management of the right-of-way to clarify, enhance, expand, waive or vary the provision of this chapter. The additional terms and conditions may conflict with the terms of Section 3.300 to 3.410 with the review and approval of City Council. Such additional terms and conditions shall be in writing and signed by both the City and applicant.

(2) **Permit Non-Exclusive.** The permit is not exclusive. The City expressly reserves the right to grant permits or rights to other Persons, as well as the City's right to use the Right-of-Way or public easement for similar or different purposes, as allowed hereunder. The permit is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way or public easement. Nothing in the permit shall be deemed to grant, convey, create, or vest in User a real property interest in land, including any fee, leasehold interest, or easement.

- (3) **Reservation of City Rights.** Nothing in the permit shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, Public Easement or public utility easement, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities. If any of User's Equipment interferes with the construction or repair of any Right-of-Way, public easement, public work, City utility, City improvement, or City Facility, and the City and User are unable to find a reasonable alternative, User's Equipment shall be removed or relocated as provided in 3.340 below, in a manner acceptable to the City, and subject to industry standard engineering and safety codes.
- (4) **Permit Fee.** The application for a permit shall be accompanied by a permit fee which shall be set and adjusted by the City Manager in an amount designed to reasonably defray administrative expenses.

3.340 Construction, Installation and Relocation

- (1) **Construction and Installation.** Subject to the terms of the permit, User may enter upon the Right-of-Way, Public Easement or public utility easement to perform all Work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on User's Facilities or in or on City Facilities. All work shall be in conformance with the Public Works Standards and other federal, state, or local laws and ordinances. The City may determine the methods used to place Equipment to the extent such methods are reasonable and feasible. Any disturbance to existing City or private facilities shall be immediately repaired and brought to equal or better condition.
- (2) **No Interference.** User, in the performance and exercise of its rights and obligations under the permit, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, traffic control signals, light poles, utility poles, pipes, cable, wire, sensor, loop, light, stabilization or "guy" wire, anchor, conduit, line, main, switch, transformer, antennae, vaults, ducts, fiber, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected personal property or properties. Upon notification by the City, User may be required to review plans of others to determine if interference may occur.
- (3) **Under Grounding Required.** All new equipment or facilities shall be constructed pursuant to W. C. 4.300 – 4. 320. User is prohibited from installing any new aerial cables, wire, or conduit except in locations where existing aerial cables, wire, or conduit have not yet been brought underground, permission for attachment or over-wrapping is obtained, and the City has no planned and funded construction project to bring aerial utilities underground. -

When new construction occurs, existing overhead equipment or facilities on the project site or immediately adjacent to the project site, shall be brought under ground, wherever reasonably possible, in a location acceptable to the City. The cost of bringing such equipment or facilities underground (but not the cost of any upgraded equipment or facility) shall be the responsibility of the developer responsible for the project site.

(4) **Hours of Work.** Except for emergencies, hours of work are as follows:

Monday through Friday:	7:00 a.m. to 8:00 p.m. Pacific Standard Time
Monday through Friday:	7:00 a.m. to 9:00 p.m. Pacific Daylight Time
Saturday:	9:00 a.m. to 6:00 p.m. Pacific Standard Time
Saturday:	9:00 a.m. to 7:00 p.m. Pacific Daylight Time
Sunday:	No work Allowed unless authorized by the City Engineer

(5) **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way or easement requires any additional permits, User shall obtain the permits and pay any standard and customary permit fees as provided by law.

(6) **Plans.** Upon request, and in a generally recognized format acceptable to the City, each User shall provide the City with an accurate map(s) certifying the approximate horizontal and vertical location, size and type of material of all of User's under ground facilities within the public Rights-Of-Way, Public Easement or Public Utility Easement or easements or a portion thereof. A User shall not be required to "pothole" or conduct "vertical locates" to satisfy a mapping request unless reasonably required for the design of a City public improvement project. For 100% City-financed projects, City shall be responsible for any elevation surveys and contacting Digsafelyoregon.com (one call) for any pre-engineering locates.

(7) **Duty to provide information.** Within sixty (60) business days of a written request from the City, each User shall:

(a) Furnish the City with information sufficient to demonstrate that User has complied with all requirements of this ordinance provided that the city outline the specific area(s) and matter for which City is reviewing the Users compliance .

(b) Make available for inspection by the City at reasonable time and intervals all maps, diagrams, plans and other documents, maintained by the User that describe or locate facilities within the public Right-of-Way or easement.

(8) **Relocation.** City shall have the right to require User to change the location of its Equipment or to remove its Equipment from the Right-of-Way and Public Easement, and to relocate its equipment within a Public Utility Easement. Costs for relocation or removal necessitated for anything other than publicly--funded projects shall be borne by the Person requesting/ necessitating relocation or removal. User shall pay the cost for

relocation of User's Equipment for publicly-funded projects to the extent the City is not reimbursed . When a project is funded with both private and public funds, User shall pay the percentage of the costs that is equal to the percentage of City funds that were spent on the relocation. Prior to relocation, the City shall make a reasonable effort to find an alternative location within a public Right-of-Way for relocated facilities. If User shall fail to relocate or remove any Equipment as requested by the City by the date established by the City, the City may cause the Equipment to be removed at User's sole expense. Upon receipt of a detailed invoice for payment from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days. This subsection operates concurrently with Oregon Administrative Rules.

- (9) **Repairs and Restoration.** Repairs to existing City Facilities that have been damaged during User's installation, operation, maintenance, removal, reinstallation, replacement or relocation of Equipment in the Right-of-Way or easement and/or restoration of landscaping shall be in conformance with the Public Works Standards. If User does not repair the Right-of-Way or easement to at least the condition that existed prior to construction within the time frame given in the permit or as otherwise agreed to by the City, then the City may, upon fifteen (15) days (or less if public safety requires) prior written notice to User, repair the Right-of-Way or easement at User's sole expense. Upon the receipt of a detailed invoice from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.
- (10) **Use by City.** The City, at its cost, may install pipes or conduit in any trench or excavation created by User, to the extent that such space therein or thereon is reasonably available. The City may also require User to excavate trenches larger than needed by User, with the excess capacity to be utilized by the City and with the City responsible for the incremental cost provided that such requirement does not impose unreasonable delay on the User's construction activities.
- (11) **Safety.** User shall perform all Work in a manner that ensures safety of workers and the public. Safety requirements and traffic maintenance shall be in conformance with the Public Works Standards.
- (12) **Moving of Structures and Equipment.** Whenever it becomes necessary to allow for the passage of buildings, machinery or other objects, User shall temporarily rearrange, remove, lower or raise its wires, cables or other Facilities as necessary, at no cost to the City. However, any person or persons, other than the City, desiring to move any such buildings, machinery or other objects, shall pay the entire actual cost incurred by User for changing, altering, moving, removing or replacing its wires, cables, or other Facilities so as to permit such passage, and shall deposit in advance with User a sum equal to such cost as estimated by User. The person or persons that requested the move shall pay all direct damages caused directly by the changing, altering, moving, removing or replacing of such wires, cables or other Facilities, except for damages and claims that are the direct result of User's negligent acts. Except in an emergency, User shall be given not less than thirty (30) days written notice by the party desiring to move such building or other

objects. Such notice shall detail the route of movement of such buildings or other objects over and along the streets, alleys, avenues, thoroughfares and public highways of the City. Upon receiving required notice, User shall complete such moves as soon as practicable, and without undue delay. Furthermore, the passage of buildings, machinery or other objects shall be with as much haste as possible and shall not be necessarily delayed or cause User unnecessary expense or waste of time.

3.350 Maintenance. User shall install and maintain all Equipment in a manner that prevents injury to the Right-of-Way, Public Easement or Public Utility Easement, the City's property or the property belonging to another person. User shall, at its own expense, repair, and maintain Equipment from time to time as may be necessary to accomplish this purpose.

3.360 Vacation. If the City vacates any Right-of-Way, or portion thereof, that User uses, User shall remove its Equipment from the Right-of-Way at its own expense unless the City reserves a public utility easement, which the City shall make a reasonable effort to do. User shall be notified of proposed vacation at least 90 days before User shall be required to relocate or remove its Equipment. If User fails to remove its Equipment within thirty (30) days, or as otherwise necessary to complete removal, after a Right-of-Way is vacated, the City may remove the Equipment at User's sole expense. Upon receipt of a detailed invoice from the City, User shall reimburse the City for the costs the City incurred within sixty (60) days.

3.370 Financial, Liability and Insurance Provisions.

(1) **Insurance.**

(a) When the City, at its sole discretion, determines that the User's Work or manner of performance warrants, User shall maintain public liability and property damage insurance that protects User and the City, as well as the City's officers, agents, and employees, from the claims referred to in Paragraph C of this Section. The insurance shall provide coverage at all times of not less than \$500,000 for bodily injury including death and personal injury for one claimant, \$1,000,000 for bodily injury including death and personal injury for each occurrence, and \$1,000,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$1,000,000 covering all claims per occurrence, plus costs of defense. Motor vehicle liability insurance in the amount of \$1,000,000 for each occurrence shall be maintained. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The Certificate of Insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered, User shall provide a replacement policy with the terms as outlined in this Section. User shall maintain continuous uninterrupted coverage, in the terms and amounts required. User may self insure any or all of the above coverage.

(b) User shall maintain on file with the City a Certificate of Insurance or self-insurance certifying the coverage required above.

(2) **Financial Assurance.** When the City, at its sole discretion, determines that User's Work or manner of performance warrants, the City may request and the User shall provide a financial security. The form of the financial security (bond, cashiers check, letter of credit, etc.) shall be reasonably determined by the City Engineer or authorized representative. The value of the financial security shall be in an amount determined by the City Engineer or designee but shall not exceed 150% of the engineer's estimated value of the Work the User is obligated to perform. The estimated value of the Work shall be verified by the City's authorized representative. The financial assurance instrument shall be reasonably reviewed and approved as to form by the City Attorney.

(3) **Indemnification**

(a) User shall indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act done under the permit, by or for User, its agents or employees, or by reason of any neglect or omission of User to keep its Equipment in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide User with prompt notice of any such claim, which User shall defend. No settlement or compromise of any such claim will be done by the City or the User without the prior written approval of the other party. User and its agents, contractors and others shall consult and cooperate with the City while conducting its defense.

(b) User shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from User's failure to remove or relocate any of its Equipment in the Rights-of-Way or easements in a timely manner, unless User's failure arises directly from the City's negligence or willful misconduct or that of another User.

3.380 Vegetation. User shall prune or cause to be pruned any vegetation to the extent allowed by law, including but not limited to tree limbs and roots that protrude into the Right-of-Way or easement and inhibit the operation of the User's Equipment. Except for an emergency, before pruning any vegetation, User shall obtain any required permits from the City. The City shall provide notification to users of any pruning or permitting requirements. All pruning shall be done using proper arboricultural practices. User shall be responsible for the costs of pruning and of replacing or treating any vegetation that is not pruned in accordance with proper arboricultural practices and that is damaged or dies as a result. If User fails to replace or treat damaged or dead vegetation within thirty (30) days after receiving written notice from the City, the City may replace or treat the vegetation at User's sole expense. Upon receipt of a detailed invoice from the City, User shall pay the City for the costs the City incurred within sixty (60) days.

3.390 Discontinued Use. Whenever User discontinues use of any Equipment and does not intend to use the Equipment within six (6) consecutive months, User shall remove the Equipment from the Right-of-Way or easement unless the City agrees, in writing, that the Equipment may remain in the Right-of-Way or easement and the User conveys title or ownership of the Equipment to the City. The City shall not unreasonably withhold such agreement. If User fails to remove Equipment that is no longer going to be used, and the City has not agreed to allow User to abandon such Equipment in place, the City may remove the Equipment at User's sole expense. Upon receipt of a demand for payment from the City, User shall pay the City for the estimated costs or a detailed invoice of the costs the City incurred within sixty (60) days.

3.400 Assignment. Except as provided below, the permit shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. User may assign a franchise or permit to a parent, subsidiary, affiliate, or to any entity that acquires all or substantially all the equity or assets of User by sale, merger or otherwise without the consent of the City, but upon written notice to the City.

3.410 Franchise Required.

“Section 3.410 Franchise Required

(1) Unless exempted by state or federal law, User shall enter into a non-exclusive Franchise agreement with the City for cable services and other services as specifically set forth in City Code. To the extent allowed by law, the requirements of this chapter may be varied or waived by the provisions of a franchise agreement to account for the different impact of various user's facilities on the City's rights of way; provided, however, that no such franchise or similar authorization shall contain material terms which are substantially more favorable or less burdensome than the material terms and conditions of other franchise agreement users with the same impacts.

“(2) To the extent that this Ordinance is not in conflict with, and can be implemented with, User's existing Franchise agreements, this Ordinance shall apply to all such Franchise agreements for use of the public rights of way or public easements.

“(3) Severability. In the event any provisions of this Ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. **Section amended in entirety by Ord. 767 adopted 2/19/15**

3.420 Alternative Procedures for Disposition of City Property

(1) Authority and Purpose

Pursuant to ORS 221.727, the City Manager or designee is authorized to sell, transfer, or modify the City's interest in any real property which is held or granted to the City or the public as a right of way or for the limited purpose of allowing installation, construction, and/or maintenance of public utility facilities.

(2) Authority of the City Manager to Sell, Transfer, or Modify

(a) The City Manager or designee may sell, transfer, or modify the City's interest in real property which is held or granted to the City or the public for the limited purpose of allowing installation, construction, and/or maintenance of public utility facilities when such property is no longer needed for public use or when such sale, transfer, or modification will further the public interest.

(b) The City Manager or designee may sell, transfer, or modify the City's interest in real property which is held or granted to the City or the public as a right of way when the sale, transfer, or modification of the right of way is a condition of approval of a land use development permit.

(c) Relevant factors to be considered by the City Manager or designee include, but are not limited to:

- (i.) The need of the City or a utility provider for the easement or any portion thereof.
- (ii.) Existing utility facilities within or near the easement.
- (iii.) Future plans for development or for extension of utility services within or near the easement.
- (iv.) Topography and lateral support of the easement and of the surrounding area.
- (v.) Development proposals for the property subject to the easement or any nearby property.
- (vi.) Appropriate consideration to be provided in exchange for a transfer.

(d) The City Manager or designee may sell, transfer, or modify the property interest, or a portion thereof, by quit claim deed or by such document as otherwise approved by the City Attorney, conditioned upon the satisfaction of conditions under which the public interest may be better served.

Section 3.420 added with adoption of Ord. 669 on 10/5/09.

PRIVILEGE TAXES

3.500 Purpose

The purposes of this ordinance are to require utilities and others occupying rights of way administered by the City to compensate the public for the use of those rights of way and to assure that the City's costs related to maintenance, administration and preservation of rights of way for such use are paid for by those who cause such costs.

3.510 Definitions

As used in this chapter, the following terms have the following meanings:

(1) **Equipment or Facilities.** "Equipment or Facilities" shall have the meaning given that term in W.C. 3.310 (4), *viz*, any tangible component, whether referred to singularly or collectively, installed, maintained, or operated by User within the right-of-way, public easement, or public utility easement. By way of example, the terms mean any pole, wire, pipe, conduit, line, main, duct, cable, wire, switch, transformer, valve, or other equipment, including any equipment box or vault, located wholly or in part under, on, or above the surface of the ground within any right of way. "Facility" includes any item placed in the right of way for the purpose of providing electric power, natural gas, telephone, telecommunications, radio, cable television, internet access, sewer, water, storm sewer or other utility or similar service.

(2) **Right-of-Way.** "Right-of-Way" shall have the meaning given that term in W. C. 3.310(8), *viz*, the space in, upon, above, along, across, over or under the public street, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow User to use. Right-of-Way also includes public utility easements.

(3) **Telecommunications carrier.** "Telecommunications carrier" has the meaning given that term in ORS 133.721.

(4) **Gross revenues.** As used in Section 3.530 (1), "gross revenues" has the meaning given that term in ORS 221.515(2). As used elsewhere in Section 3.530 (2), "gross revenues" means all revenue, including but not limited to monthly service charges received from customers within the City, any separately charged amounts received from customers within the City (excluding amounts collected for taxes and paid to the taxing entity), and any other amounts received for services (including resale services and rent) that use facilities but excluding any amount paid directly by the United States Government, or revenue from Cellular Mobile Radio Services/Mobile Telephone ("CRMS") services.

3.520 Tax Imposed

Except as provided in this Section, a privilege tax is imposed on all persons who place equipment or facilities in or on City right of way.

3.530 Amount of Tax

The privilege tax shall be as established by Resolution of the City Council or as follows:

(1) The privilege tax for a telecommunications carrier with facilities in rights of way and who provide service within the City shall be seven percent of gross revenues earned within the City.

(2) The privilege tax for all others with facilities in rights-of-way within the City and serving city residents shall be five percent of gross revenues.

(3) The privilege tax for those with antennas or other facilities in the right-of-way, public easement or public utility easement, e.g., wireless/CMRS providers, shall be as negotiated and agreed to by the city and provider.

(4) The privilege tax for persons who have facilities in rights of way but do not provide service within the City shall be \$.75 per calendar quarter per foot of line, wire, pipe, or conduit in the right-of-way

(5) The privilege tax shall be cumulative. By way of example, a person required to pay tax on both antennas and facilities shall pay both the tax on antennas and the tax on facilities.

3.540 Credit

Any person paying a franchise fee to the City shall be entitled to a credit towards the Privilege Tax in the full amount of the franchise fee paid.

The gross revenues of a telecommunication carrier that provides telecommunication services using utility facilities owned or operated by other utilities may be reduced by the amount paid for the use of such utility facilities if the utility that owns or operates the utility facilities reports the amount paid to them as gross revenue as required by this section.

3.550 Payment, Accounting and Audit

(1) The privilege tax shall be paid quarterly within 30 days after the end of the quarter. Unless otherwise agreed to by the City in writing, quarters shall end on March 31, June 30, September 30 and December 31 of each year. Each payment shall be accompanied by an accounting of applicable gross revenues and a calculation of the amount payable. Late payment fees shall be assessed at 12% per annum.

(2) The City may audit any person subject to or paying the privilege tax as follows:

(a) The City may, at any time within six years of receipt, investigate any accounting submitted and determine the accuracy of the amount reported. The utility

shall make available for investigation all records, including historical records and books of the utility necessary for verification of the report. Such investigation may be done by the City or any person selected by the City. Neither acceptance of payment nor a failure to make an investigation shall be deemed to prevent subsequent investigation by the City, or to estop the City from collecting any amount due.

(b) If, upon investigation or otherwise, the fee or tax paid is determined to be excessive, a refund of the excess will be paid. If the fee paid is found to be insufficient, the manager shall notify the utility of the amount of the deficiency and demand payment of the amount.

(c) If a utility fails to properly report the true amount of gross revenue or other basis from all accounts within the City as determined by the city after investigation, a late payment charge will be owed on the under reported gross revenue calculated from the first day of the calendar quarter in which the error occurred to the date on which the city received payment, compounded monthly. The late payment charge shall be due at the same time that the utility is required to make payment of any insufficiency of the license fee or privilege tax. If the city manager determines that the insufficiency is due to fraud, intent to evade the fee or tax, or is greater than 15% of the total amount due, a penalty of 25% of the amount of the total fee or tax shall be paid in addition to the amount due and the late payment charge.

(d) Within 10 days from the receipt of notice by the manager that the license fee or privilege tax paid is insufficient and demands payment, the utility may appeal to the council. Such appeal must be in writing and specifying the grounds of such appeal. If no such appeal is taken, if the council decides adversely,, or if the council decides that any other amount is due, the manager shall proceed to collect the amount determined to be due and unpaid.

(e) In addition to any other penalties prescribed by law, if a licensee fails to make payment of any deficiency determined to be due and unpaid in accordance with the provisions of this subsection within 10 days of such final determination, the manager may suspend the license issued to the licensee.

(f) If any person operates without a license as required by this Article, operates during a period of suspension after licensee has exhausted all due process rights, or materially under reports the license fee or privilege tax which is due, such person shall be liable for an additional penalty, computed at two percent (2%) of the gross revenues received during the applicable period, which shall be paid in addition to the applicable license fee or privilege tax.

(3) Refunds. In the event that a utility is ordered to refund any revenues by a governmental entity or agency with jurisdiction to make such an order and such refund will affect the license fee or privilege tax paid pursuant to this section, the calculation of the license fee or privilege tax shall not include the refund except pursuant to a mutually agreed upon schedule. If

there is a substantial budgetary impact, such schedule may include spreading the impact of the refund on the future license fee or privilege tax to be paid to the City over a period of time commencing the first full fiscal year following the ordering of the refund. Such schedule shall minimize the administrative impact to the Licensee and may include interest on the unpaid refund.

(4) Other City Costs. All licensees shall, within thirty (30) days after written demand, reimburse the city for all reasonable costs and expenses incurred by the City in connection with any termination, revocation or lesser sanction of the license consistent with applicable state and federal laws.

3.560 Exemptions

The following exemptions apply:

(1) Any facility placed in the right-of-way solely to provide service for transportation or vehicular use of the right-of-way is exempt from the tax.

(2) Any facility placed in the right-of-way by or with another government entity, pursuant to an Intergovernmental Agreement (“IGA”) entered into with the City, in accordance with ORS Chapter 190, which IGA serves a public purpose and is subject to other reasonable and nondiscriminatory consideration that the City determines will better serve the public need, safety, or welfare than the tax would otherwise provide.

Amended by Ordinance No. 482, April 21, 1997.
Section 3.000 Amended by Ordinance No. 489, October 20, 1997
Section 3.000 Amended by Ordinance No. 712, adopted January 7, 2013
Section 3.116 Amended by Ordinance No. 644 – March 3, 2008
Section 3.022 added by Ordinance No. 752 adopted December 1, 2014
Section 3.300 Added by Ordinance No. 615 adopted December 18, 2006
Section 3.410 Amended by Ordinance No. 767 adopted February 19, 2015
Section 3.420 Added by Ordinance No. 669, adopted October 5, 2009
Section 3.500 Added by Ordinance No. 616 adopted December 18, 2006
Section 3.560 Amended by Ordinance No. 765 adopted January 5, 2015

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ENVIRONMENT

GENERAL PROVISIONS

8.000 General Provisions – Environment

(1) Chapter 8 of this Code is enacted for the purpose of promoting the general public welfare by ensuring procedural due process in the administration and enforcement of the City's Comprehensive Plan, Design Review, Permitting Process, Building Code, Development Standards and Public Works Standards.

(2) This Chapter shall be known as the Environment Ordinance and includes those ordinances familiarly referred to as the Water Conservation Ordinance, Public Sanitary Sewer Use Ordinance, Industrial Wastewater Ordinance, Storm Water Ordinance, and Garbage Disposal Ordinance, and Environment Enforcement, etc.

8.002 Administration.

Except as otherwise provided herein, the Public Works Director, hereinafter referred to as “Director”, shall administer, implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed upon the Director may be delegated by the Director to a duly authorized representative.

8.004 Abbreviations. The following abbreviations shall have the designated meanings:

- | | | |
|------|----------------|--|
| (1) | <u>BOD</u> | Biochemical Oxygen Demand |
| (2) | <u>BMP</u> | Best Management Practices |
| (3) | <u>BMR</u> | Baseline Monitoring Reports |
| (4) | <u>CFR</u> | Code of Federal Regulations |
| (5) | <u>CIU</u> | Categorical Industrial User |
| (6) | <u>COD</u> | Chemical Oxygen Demand |
| (7) | <u>DEQ</u> | Oregon Department of Environmental Quality |
| (8) | <u>US EPA</u> | U.S. Environmental Protection Agency |
| (9) | <u>gpd</u> | Gallons Per Day |
| (10) | <u>IU</u> | Industrial User |
| (11) | <u>mg/l</u> | Milligrams per liter |
| (12) | <u>NPDES</u> | National Pollutant Discharge Elimination System |
| (13) | <u>NSCIU</u> | Non-Significant Categorical Industrial User |
| (14) | <u>O&M</u> | Operation and Maintenance |
| (15) | <u>POTW</u> | Publicly Owned Treatment Works |
| (16) | <u>RCRA</u> | Resource Conservation and Recovery Act |
| (17) | <u>SIC</u> | Standard Industrial Classification |
| (18) | <u>SIU</u> | Significant Industrial User |
| (19) | <u>SNC</u> | Significant Non-Compliance |
| (20) | <u>SWDA</u> | Solid Waste Disposal Act (42 U.S.C. 6901, et seq.) |
| (21) | <u>TSS</u> | Total Suspended Solids |

(22) USC United States Code

8.006 Definitions. For the purpose of this Chapter, the following terms, words, phrases and their derivations shall have the meaning given herein, unless the context specifically indicates otherwise:

(1) Act or “the Act”. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) Approval Authority. The Oregon Department of Environmental Quality (DEQ).

(3) Authorized or Duly Authorized Representatives of the User.

(a) If the user is a corporation, authorized representative shall mean:

1) The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2) The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate or direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulation; can ensure that the necessary systems are established or action taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership, or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

(c) If the user is a Federal, State or local government facility the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in paragraphs (3) (a)-(c) above may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the authorization is submitted to the City.

(4) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration (milligrams per liter mg/l).

(5) Best Management Practices or BMP's means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMP's include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMP's may also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

(6) Building Drain. Shall mean that part of the lowest piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the exterior walls of the buildings and which conveys it to the building sewer, which begins five (5) feet (1.524 meters) outside of the building exterior wall.

(7) Building Sewer (Sanitary). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a building drain and that receives the sewage discharge of the building drain and conveys it to a public sanitary sewer, private sanitary sewer, private sewage disposal system, or other point of disposal (aka sanitary sewer lateral)..

(8) Building Sewer (Storm). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a building drain and that receives the stormwater or other approved drainage, but no sewage discharge from a building drain, and conveys it to a public stormwater system, private stormwater system or other point of disposal (aka storm sewer lateral).

(9) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S. C. 1317) that applies to a specific category of users and that appears in 40 CFR Chapter I, Subchapter N, Parts 405-471, incorporated herein by reference.

(10) Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

(11) Chemical Oxygen Demand (COD). A measure of oxygen required to oxidize all compounds, both inorganic and organic in water. COD is expressed as the amount of oxygen consumed from chemical oxidant in mg/l during a specific test.

(12) City. The City of Wilsonville, Oregon or the City Council of Wilsonville, Oregon or a designated representative of the City of Wilsonville, Oregon.

(13) City Authorized Representative for Stormwater. A Representative selected by the Community Development Director to oversee stormwater activities and enforcement.

(14) Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

(15) Combined Sewer. Shall mean a sewer receiving both surface runoff and sewage.

(16) Commercial. Shall mean for the purposes of this Chapter, all buildings or structures of which are not designed for the purposes of these sections as residential or industrial in keeping with the City's zoning and building code provisions. Commercial when used in the context of this chapter's pretreatment standards shall mean industrial.

(17) Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on either an increment of flow or time.

(18) Contractor. Shall mean a person or persons, corporation, partnership or other entity who is a party to an agreement with the City.

(19) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, to which the only pollutant added, is heat.

(20) Control Authority. The City of Wilsonville, Oregon or designated representative of the City, tasked with the administration of this Chapter.

(21) Customer. Shall mean any individual, firm, company, association, society, corporation, group or owner, who receives utility services from the City such as water, sanitary sewer, stormwater and streetlights.

(22) Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

(23) Daily Maximum Limits. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of a day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measure of the pollutant concentration derived from all the measurements taken that day.

(24) Department of Environmental Quality or DEQ. The Oregon Department of Environmental Quality or where appropriate, the term may also be used any duly authorized official of the Department.

(25) Director. The City of Wilsonville Public Works Director for the City of Wilsonville or designated representative of the Director.

(26) Discharge. The discharge or the introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c) or (d), of the Act.

(27) Environmental Protection Agency or EPA. The US Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director, the Regional Administrator or other duly authorized official of said agency.

(28) Existing Source. Any source of discharge that is not a “new source”.

(29) Garbage. Shall mean all refuse and solid wastes, including ashes, rubbish in cans, debris generally, dead animals, street cleaning and industrial wastes and things ordinarily and customarily dumped, solid wastes from domestic and commercial preparation, cooking and dispensing food, and from the handling, storage and sale of product, but not including source separated recyclable material purchased from or exchanged by the generator for fair market value for recycling sewage and body waste.

(30) Grab Sample. A sample that is taken from a waste stream on a one-time basis without regard to the flow in the waste stream over a period of time not to exceed 15 minutes.

(31) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

(32) Illicit Discharge. Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

(33) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from a non-domestic source.

(34) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

(35) Industrial. Shall mean in the context of building sanitary sewer permits and connections, all buildings or structures in which a product is manufactured, stored, or distributed, or any combination of the above in keeping with the City's zoning and building code provisions. It shall otherwise mean in the context of this Chapter for pretreatment standards, non-domestic.

(36) Industrial User. A source of indirect discharge.

(37) Industrial Wastewater. Any non-domestic wastewater originating from a nonresidential source.

(38) Interference. A discharge, which, alone or in conjunction with a discharge or discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes; use or disposal; and

(b) Therefore is a cause of a violation of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued there under (or any more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

(39) Local Limits. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in this Chapter.

(40) Maximum Allowable Headwork's Loading. The maximum pollutant loading that can be received at the headwork's of the POTW and be fully treated to meet all disposal limits and without causing interference. This value is calculated in the derivation of Technically Based Local Limits.

(41) Major Sanitary Sewer Line Extension. Shall mean the extension of a sanitary mainline that is, or will be, located within public rights-of-way or dedicated easements.

(42) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(43) Monthly Average. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during the month.

(44) Monthly Average Limits. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

(45) National Pretreatment Standard. National pretreatment standard is defined in 40 CFR 403.3(l) as any regulation containing pollutant discharge limits promulgated by EPA under Section 307(b) and (c) of the Clean Water Act applicable to users, including the general and specific prohibition found in 40 CFR 403.5.

(46) Municipal Separate Storm Sewer System (MS4). A system of conveyances, including roads, ditches, catch basins, and storm drains that are owned or operated by a public entity.

(47) New Source.

(a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of Proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are hereafter promulgated in accordance with that section provided that:

- 1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- 2) The building, structure, facility or installation completely replaces the process of production equipment that causes the discharge of pollutants at the existing source or
- 3) The production of wastewater generating processes of the buildings, structure, facility or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity, as the existing source should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (a) (1), (2) of this section but otherwise alters, replaces or adds to existing process or production equipment.

(c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- 1) Begun, or caused to begin as part of a continuous on-site construction program;
 - a) Any placement, assembly, or installation of facilities or equipment; or
 - b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities for equipment or
- 2) Entered into a binding or contractual obligation for the purchase of facilities of equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for

feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(48) Non-contact Cooling Water. Water used for cooling that does not come into contact with any raw material, intermediate product, waste product or finished product.

(49) NPDES Stormwater Permit. A National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342).

(50) NPDES Waste Discharge Permit. A National Pollutant Discharge Elimination System permit issued pursuant to ORS 468B.050 and the Federal Clean Water Act.

(51) Official. Shall be the Building Official for the City of Wilsonville.

(52) Owner. Shall mean the person(s) who may hold title to or lease the property for which water service has or will be provided.

(53) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the City's NPDES Permit (including an increase in the magnitude or duration of a violation).

(54) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, state, or local governmental entities.

(55) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

(56) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes and certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

(57) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration in the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical or biological processes, by process changes or by other means except by diluting the concentration of the pollutant unless allowed by the applicable Pretreatment Standard.

(58) Pretreatment Requirement. Any substantive or procedural requirements related to the pretreatment, other than national pretreatment standards, imposed on an industrial user.

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(59) Pretreatment Standard or Standard. Prohibited discharge standards, categorical Pretreatment standards and Local Limits.

(60) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain types or characteristics of wastewater as established by EPA, DEQ, and/or the Director.

(61) Properly Shredded Garbage. Shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sanitary sewers, with no particle greater than one half (1/2) inch (1.27 centimeters) in any dimension.

(62) Public Sewer. Shall mean a sewer, either sanitary or storm, in which all the owners of abutting property have equal rights, and which is controlled by public authority.

(63) Public Stormwater System. A stormwater system owned or operated by the City of Wilsonville.

(64) Publicly Owned Treatment Works or POTW. A “treatment works” as defined in Section 212 of the Act, (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in collection, storage, treatment, recycling and reclamation of sewage, or industrial wastes, and any conveyances which convey wastewater to a treatment plant or other point of discharge. The term also means the municipal entity having responsibility for the operation and maintenance of the system.

(65) Public Works Director. The person designated by the City to supervise the operation of the POTW and who is charged with certain duties and responsibilities by this Chapter or their duly authorized representative.

(66) Residential. Shall mean for the purposes of this Chapter, building sewers and connections, buildings or structures, which are built to be occupied for living purposes in keeping with the City’s zoning and building code provisions.

(67) Residential Users. Persons only contributing sewage wastewater to the municipal wastewater system.

(68) Receiving Stream or Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

(69) Sanitary Sewer. Shall mean a City sewer which carries sewage and to which storm, surface and ground water are not intentionally admitted.

(70) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

(71) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

(72) Sewer. Shall mean a pipe or conduit for carrying sewage in the case of sanitary (wastewater) sewer lines. Shall mean a pipe or conduit for carrying stormwater runoff, surface waters or drainage in the case of storm water lines.

(73) Sewer Lateral. See Building Sewer – Sanitary and Storm definitions.

(74) Significant Industrial User.

(a) Except as provided in paragraph (b) of this section, the term Significant Industrial User means:

- 1) An industrial users subject to Categorical Pretreatment Standards or
- 2) Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow-down wastewater); contributes a process waste stream which makes up 5 per cent of more of the average dry weather hydraulic or organic capacity of the POTW or is designated as such by the City on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(b) The City may determine that an Industrial User subject to the categorical Pretreatment Standards is a Non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met.

- 1) The Industrial User, prior to City's findings, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- 2) The Industrial User annually submits the certification statement required in Section 8.310(14) together with any additional information necessary to support the certification statement; and
- 3) The Industrial User never discharges any untreated concentrated wastewater.

(c) Upon finding that an industrial user meeting the criteria in paragraph (a)(2) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with CFR 403.8(F)(6), determine that such industrial user is not a significant industrial user.

(75) Slug Load or Slug Discharge. Any discharge at a flow rate or concentration which has the potential to cause a violation of the specific discharge prohibitions of this article. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, Local Limits of Permit conditions.

(76) State. State of Oregon.

(77) Storm Drain. (Sometimes termed "storm sewer"). Shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling waters.

(78) Stormwater. Any flow occurring during or following any form of natural precipitation and resulting there from, including snow melt.

(79) Suspended Solids or Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid which is removable by laboratory filtering.

(80) Toxic Pollutant. One of the pollutants or combination of those pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency under the provision of Section 307 (33 U.S.C. 1317) of the Act.

(81) Treatment Plant Effluent. Any discharge of pollutants from the POTW into waters of the state.

(82) User or Industrial User. Any person who contributes, or causes or allows the contribution of sewage, or industrial wastewater into the POTW, including persons who contribute such wastes from mobile sources.

(83) Wastewater. The liquid and water-carried industrial wastes, or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which is contributed to the municipal wastewater system.

(84) Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

(85) Water is water from the City water supply system

(86) Water Course. Shall mean a channel in which a flow of water occurs, either continuously or intermittently.

8.008 Miscellaneous Provisions

(1) Pretreatment Charges and Fees. The City may adopt, from time to time, by Administrative Authority, in the City's Master Fee Schedule reasonable charges and fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include;

(a) Fees for permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by industrial users;

(c) Fees for reviewing and responding to accidental discharge procedures and construction;

(d) Fees for filing appeals;

(e) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Chapter and are separate from all other fees, system development charges, fines and penalties chargeable by the City.

(2) Non-exclusivity. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director may take other action against any industrial user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any non-compliant industrial user.

ENVIRONMENT

WATER CONSERVATION

8.101 Declaration of Emergency

A. When the City Water supply has become, or is about to become, depleted to such an extent as to cause a serious water shortage in the City, the Mayor shall have the authority to declare an emergency water shortage and to direct that the provision of Section 8.101, 8.102 and 8.130 of this article of the Code be enforced.

- B. In the event the Mayor is unavailable to declare an emergency, the following shall be the order of succession of authority, based upon availability:
- a. The President of the Council;
 - b. Any other council person;
 - c. The City Manager;
 - d. The Public Works Director

8.102 Notice of Declaration of Emergency

When a declaration of emergency is announced by the Mayor, the City Manager shall make the declaration public in a manner reasonably calculated to provide reasonable notice to the public. This provision shall not be construed as requiring personal delivery or service of notice or notice by mail.

8.108 Standards – Purpose.

This Section is established because during the summer months and in other times of emergency there is or may be insufficient water in the City water supply system to allow irrigation and other uses of water at all times by all parties; and the level of water supplied by the City is at certain times dangerously low; and it is imperative to the public well-being that certain uses of water not essential to health, welfare and safety of the City be restricted from time to time.

8.112 Standards – Application.

The provisions of this Section shall apply to all persons using water, both in and outside the City, regardless of whether any person using water shall have a contract for water services with the City.

8.114 Standards – Wasted Water.

(1) Where water is wastefully or negligently used on a customer's premises, seriously affecting the general service, the City may discontinue the service if such conditions are not corrected after due notice by the City.

(2) Water shall not be furnished except through a meter to any premises where there are defective or leaking pipes, faucets, closets or other fixtures, or where there are water closets or urinals without self-closing valves and, when such leakage or other defects are discovered and not corrected, the City may discontinue service after giving due notice and until repairs are made. If significant deficiencies are not corrected in a timely manner, as defined by the Public Works Director, the City may introduce enforcement action in conformance with Section 8.150 Violations.

(3) Water must not be allowed to run to waste through any faucet or fixture or kept running any time longer than actually necessary. Sprinkling of lawns, gardens, and parking strips shall be confined to what is actually needed and no running to waste on sidewalks, streets, and gutters shall be permitted. When any such waste is discovered, the water service to the premises may be discontinued.

8.116 Section Not Used

8.118 Standards – General.

(1) In all new construction and in all repair and/or replacement of fixtures or trim, only fixtures or trim not exceeding the following flow rates and/or water usage shall be installed. These rates are based on a presence at the fixture of 40 to 50 PSI.

Water closets, tank type	–	1.6 gallons per flush.
Water closets, flush-o-meter type	-	1.6 gallons per flush
Urinals, tank type	-	1.0 gallons per flush
Shower heads	-	2.5 GPM
Lavatory, sink faucets	-	2.5 GPM
Metered faucets	-	0.25 gallons per use

(2) Faucets on lavatories located in restrooms intended for the transient public in service stations, park toilet rooms, train stations and similar facilities shall be metering or self-closing.

(3) Any water connective device or appliance requiring a continuous flow of five GPM of more and not previously listed in this section shall be equipped with an approved water recycling system.

8.120 Section Not Used

8.130 Use of Water During Emergency – Prohibited Uses of Water.

(1) When a declaration of emergency is announced and notice has been given in accordance with this Section, the use and withdrawal of water by any person may be limited and include prohibition of the following:

- (a) Sprinkling, watering or irrigating shrubbery, trees, lawns, grass, groundcovers, plants, vines, gardens, vegetables, flowers or any other vegetation.
- (b) Washing automobiles, trucks, trailers, trailer houses, railroad cars, or any other type of mobile equipment
- (c) Washing sidewalks, driveways, filling station aprons, porches and other surfaces.
- (d) Washing the outside of dwellings, washing the inside or outside of office buildings.
- (e) Washing and cleaning any business or industrial equipment and machinery.
- (f) Operating any ornamental fountain or other structure making a similar use of water.
- (g) Maintaining swimming and wading pools not employing a filter and re-circulating system.
- (h) Permitting the escape of water through defective plumbing.

8.132 Use of Water During Emergency – Exemptions.

At the discretion of the Mayor, one or more of the uses specified in Section 8.130 may be exempted from the provisions of this section. The exemption shall be made public as provided in Section 8.102 of this Chapter.

8.134 Use of Water During Emergency – Length of Restriction.

The prohibition shall remain in effect until terminated by an announcement by the Mayor in accordance with Sections 8.102.

8.136 Use of Water During Emergency – Declaration Period.

(1) The Mayor shall cause each declaration made by him pursuant to Sections 8.101 to 8.150 to be publicly announced by means of posting notice in three (3) public and conspicuous places in the City, and he may cause such declaration to be further announced in a newspaper of general circulation within the City when feasible. Each announcement shall prescribe the action taken by the Mayor, including the time it became or will become effective, and shall specify the particular use for which the use of water will be prohibited.

(2) Whenever the Mayor shall find the conditions which gave rise to the water prohibition in effect pursuant to Sections 8.101 to 8.150 no longer exist, he may declare the prohibition

terminated in whole or in part in the manner prescribed by these sections, effectively immediately upon announcement.

(3) The Mayor shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this section, and this includes the notice of termination, both in whole or in part.

8.140 Authority of Officer.

Any police officer of the City, Clackamas County or designated employee of the City may enter the premises of any person for the purpose of shutting off or reducing the flow of water being used contrary to the provisions of Sections 8.101 to 8.150.

8.150 Penalties.

A person convicted of a violation of any provisions of Sections 8.101 to 8.140 shall be punished upon a first conviction thereof for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof for a Class C Misdemeanor pursuant to Section 1.011. Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punished as such hereunder.

PUBLIC SANITARY SEWER USE

8.200 Public Sanitary Sewer Use – General Provision

(1) Purpose. Provides for the required use of public sanitary sewer facilities except as otherwise set forth, for the regulation of the building of and connection to public sanitary sewer facilities and for the uniform regulation of indirect discharge to the Publicly Owned Treatment Works (POTW) through the issuance of permits to certain non-domestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(2) Application to Users within and outside of City limits. Provisions of this article shall apply to users within the City limits and to users outside the City limits who, by contract or agreement with the City, are included as users of the municipal wastewater system.

8.202 Use of Public Sanitary Sewer Required. Except as herein provided in this chapter:

(1) It shall be unlawful for any person to place, deposit or permit to be deposited in any manner as described herein on public or private property within the City of Wilsonville, or in any area under the jurisdiction of said City, any human or animal excrement, garbage or other objectionable waste.

(2) It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

(3) The owner of any house, building, or property used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley of right-of-way, in which there is now located or may in the future be located, a public sanitary sewer of the City, is hereby required, at his expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sanitary sewer in accordance with the provisions of this section of the Code within ninety (90) days after the date of official notice to do so, provided that said public sanitary sewer for the residential use is within three hundred (300) feet of the property. Commercial and industrial buildings or structures shall connect no matter what the distance is from the public sanitary sewer to the property to be served.

8.204 Private Sewage Disposal.

(1) Where a public sanitary sewer is not available under the provisions of Section 8.202(4), the building sewer shall be connected to a private sewage disposal system.

(2) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the City.

(a) The application for such permit shall be made on a form furnished by the City, and shall be supplemented by any plans, specifications and other information as are deemed necessary by the City. The appropriate Type B Construction Permit and plan check fee shall be paid by the City at the time the application is filed.

(b) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City. Inspection of the work in any stage of construction shall be allowed and, in any event, the applicant for the permit shall notify the City when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the City.

(3) The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations to the Oregon State Board of Health. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to discharge any natural outlet. If it is determined by the City that a health hazard would be created or that the soil is unable to transfer the sewage runoff through the soil as an effective means of treatment of sewage disposal, the City shall reject the septic or private sewage disposal system, and require, at the owner's expense, construction of an adequately sized sanitary sewer line as approved by the City to connect to an existing public sanitary sewer system. The owner shall construct the sanitary sewer by those requirements of the Public Works Standards of the City of Wilsonville

(4) At such time as a public sanitary sewer becomes available to a property served by a private sewage disposal system, as provided in Section 8.202(4), a direct connection shall be made to the public sanitary sewer in compliance with this Code, and any septic tanks, cesspools and similar disposal facilities shall be removed or opened and filled with sand or gravel in accordance with the Oregon Plumbing Specialty Code.

(5) Where existing buildings are too low to be served by gravity by an available sanitary sewer, the existing septic tank facilities shall be maintained in use and, when so ordered by the City under Section 8.202(4), approved pumping facilities shall be installed to pump the septic tank effluent to the available sanitary sewer system.

(6) The owner shall operate and maintain private sewage disposal or pumping facilities in a sanitary manner at all times, at no expense to the City.

8.205 Conflict

No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by State health officials.

8.206 Buildings Sanitary Sewers and Connections.

(1) No unauthorized person shall uncover, make any connections to or opening into, use, alter or disturb any sanitary sewer lateral or appurtenance thereof without first obtaining a written permit from the Building Official. In each case, the owner or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the official.

(2) There shall be three (3) classes of building sanitary sewer lateral permits:

- (a) Residential, Single, and Multifamily,
- (b) Commercial; and
- (c) Industrial Service.

(3) All costs and expenses incident to the installation and connection of the building sanitary sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of the building sanitary sewer.

(4) A separate and independent building sanitary sewer shall be provided for every building; except, however, when one building stands at the rear of another on an interior lot and no private sanitary sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, then the building sanitary sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(5) Old building sanitary sewers may be used in connection with new buildings only when they are found, on examination or through tests, by the Official, to meet all requirements of this Code Chapter.

(6) The size, slope, alignment, construction material of a building sanitary sewer, and the methods to be used excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Oregon Structural Specialty Code and the Oregon Plumbing Specialty Code and other applicable rules and regulations of the City.

(7) Whenever possible, the building sanitary sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sanitary sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sanitary sewer.

(8) No person shall make connection of roof down spouts, areaway drains, or other sources of stormwater runoff to a building sanitary sewer or sewer drain which, in turn, is connected directly or indirectly to the public sanitary sewer.

(9) The connection of the building sanitary sewer into the public sanitary sewer shall conform to the requirements of the State of Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City. All such connections shall be made

gas-tight and water-tight. Any deviation from prescribed procedures and materials must be approved by the Building Official before installation.

(10) The applicant for the building permits shall notify the Building Official when the building sanitary sewer is ready for inspection. The connection shall be made under the supervision of the Building Official or designated representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the applicant's or owner's expense in a manner satisfactory to the City, in accordance with adopted Public Works Standards.

(11) All excavations for building sanitary sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

(12) The property owner is responsible for the maintenance, repair and replacement of the sanitary sewer lateral from the building to the sanitary sewer main. Sewer lateral maintenance work, which, as used herein, includes pipe clean-out, clog removal, root removal, foaming and any other work or protocol required to ensure proper flow. Repair and replacement work for the sewer lateral shall be done in accordance with the City's Public Works Standards and the City's Right of Way Permit.

8.206 Equipment and/or Vehicle Washing Facilities

(1) Equipment and/or Vehicle wash areas shall be covered

(2) Equipment and/or Vehicle washing facilities shall be equipped with a water recycling system approved by the Public Works Director.

(3) Best available technology shall be utilized for the pretreatment system of any drainage to the sanitary sewer system.

(4) No coin operated equipment and/or vehicle washing facilities shall be installed or used until plans have been submitted to and approved by the City. The plans shall show the method of connections to an approved pretreatment system before discharging into the sanitary sewer system, disposal of rain or surface water and the protection of the potable water system. No rain or surface water shall be conveyed to or through the sanitary sewer system.

8.208 Use of Public Sanitary Sewers.

(1) No unauthorized person shall uncover, make any connections with or openings into, use, alter, or disturb, any public sewer or appurtenance thereof without first obtaining a written permit from the City.

(3) When required by the City, the owner of any property serviced by a building sanitary sewer carrying industrial wastes or large quantities of discharge shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sanitary sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when

required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(4) All measurements, tests and analysis of the characteristics of water wastes to which reference is made in this chapter of the Code shall be determined in accordance with the current edition of the "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon testing of suitable samples taken at said control manhole.

In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sanitary sewer to the point at which the building sanitary sewer is connection. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. When customary measurement for BOD characteristics is impractical due to time constraints and the necessity to have immediate measurable results, mg/l of BOD may be based on forty-two percent (42%) of measured C.O.D.

(5) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director or Building Official, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Director or Building Official and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner, at his expense.

(6) Separation of Domestic and Industrial Waste Streams. All new and domestic wastewaters from restrooms, showers, drinking fountains, etc., unless specifically included as part of a categorical pretreatment standard, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through a required pretreatment system and the industrial user's monitoring facility. When directed to do so by the Director, industrial users must separate existing domestic waste streams.

(7) Hauled Wastewater. Septic tank waste (septage) or hauled septage shall not be accepted into the municipal wastewater system.

(8) Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in Section 8.604

8.210 Public Sanitary Sewers – Construction

(1) No person shall construct, extend or connect to any public sanitary sewer without first obtaining a written permit from the City and paying all fees and connection charges and furnishing boards as required herein and the Public Works Standards for the City of Wilsonville.

The provisions of this section requiring permits shall not be construed to apply to contractors constructing sanitary sewers and appurtenances under contracts awarded and entered into by the City.

(2) The application for a permit for public sanitary sewer construction shall be accompanied by complete plans, profiles and specifications, complying with all applicable sections of the Code, rules and regulations of the City prepared by a registered civil engineer in the State of Oregon showing all details of the proposed work based on an accurate survey of the ground. The application, together with the plans, profiles and specifications shall be examined by the City Engineer or and authorized representative of the City Engineer who shall within twenty (20) days, approve them as filed or require them to be modified as he may deem necessary.

(3) All sewer works plans, specifications and construction procedure shall conform to Public Works Standards for the City of Wilsonville.

(4) Prior to issuance of a permit for public sanitary sewer construction, the applicant shall furnish to the City a performance bond, or cash deposit, in the amount of the total estimated cost of the work. Such performance bond, or cash deposit, shall be conditioned upon the performance of the terms and conditions of the permit and shall guarantee the correction of faulty workmanship and replacement of defective materials for a period of one (1) year from and after the date of acceptance of the work by the City.

(5) Except as provided, the extension of the public sewage facilities to serve any parcel or tract of land shall be done by and at the expense of the owner. The size of all sanitary sewer mains and other sewage facilities shall be as required by the City Engineer to lay sewer pipe larger than that required for his own purposes, to accommodate other users, and may be reimbursed under the provisions of Section 3.116 of the Wilsonville Code for the difference in cost between the size of the line installed and that which would be required for his own use.

(6) Where special conditions exist, in the opinion of the City Engineer, relating to any reimbursement agreement pursuant to the provisions of this section, The City may, either in addition to, or in lieu of any of the provisions of the section, authorize a special reimbursement contract between the City and the person or persons constructing public sewerage facilities. Said special reimbursement agreement shall be made and entered into prior to the issuance of a permit for the work by the City.

(7) Vehicle maintenance installations shall be covered and equipped with oil/water separation and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(8) Vehicle fueling installations shall be covered and equipped with oil/water separators, spill control manholes, shut off valves and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(9) Outside storage areas for grease, oil, waste products, recycling, garbage, and other sources of contaminants shall be equipped with oil/water separators, shut off valves and spill protection approved by the Public Works Director for any drainage to the sanitary sewer system. No drainage is allowed to enter the storm sewer system

8.212 Public Sanitary Sewers – Property Damage Prohibited.

No unauthorized person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the sewage works which is a municipal public utility. Any person violating this provision and as a result thereof damages any part of the sewage works, shall be subject o arrest and prosecution under the laws of the State of Oregon as set forth in OPRS 164.345 through 164.365.

8.214 Powers and Authorities of Inspectors

(1) In addition to the authority set forth in Section 8.312, the Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing, in connection with the provisions and regulations of City sewage collection and treatment system as provided for in this Chapter.

(2) While performing the necessary work on private properties referred to in Section 8.312(1) and 8.214(1) above, the owner of the premises or representative shall notify the City or duly authorized employee of the City to observe all safety rules applicable to the premises established by the owner. The premises shall be maintained in a safe condition and the owner or representative shall have a duty to notify the Director and any duly authorized representative of the City of any unsafe conditions.

(3) The City or duly authorized employee of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a negotiated easement, of for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works which is connected to or lying within an easement. All entry and subsequent work, if any, on said easement of any connection thereto, on the sanitary system shall be done according to those regulations as stipulated in the Code of the City of Wilsonville.

ENVIRONMENT

INDUSTRIAL WASTEWATER REGULATIONS

8.300– General Provisions.

(1) Purpose and Policy This chapter sets forth uniform requirements for Users of the (POTW) for the City of Wilsonville and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] Section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403). The objectives of this chapter are:

(a) To prevent the introduction of pollutants into the POTW that will interfere with its operation;

(b) To prevent the introduction of pollutants into the POTW, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the POTW;

(c) To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(d) To promote reuse and recycling of industrial wastewater and sludge from the POTW;

(e) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements and any other Federal or State laws which the POTW is subject thereto.

(f) This Chapter authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires User reporting.

8.301 Applicability.

This Chapter shall apply to all Users of the POTW, whether inside or outside of the City limits, by contract, permit, or agreement with the City.

8.302 General Sanitary Sewer Use Requirements

(1) Prohibited Discharge Standards

(a) General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which will cause Interference or Pass Through. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State or local pretreatment standards or requirements.

(b) Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

- 1) Pollutants which create fire or explosion hazard in the POTW, including but not limited to waste streams with a closed cup flash point of less than 140°F (60°C) using the test methods prescribed in 40 CFR 261.21.
- 2) Solid or viscous substances in amounts which will obstruct the flow in the POTW resulting in Interference.
- 3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through.
- 4) Waste streams having a pH less than 5.5 or more than 10.0, or which may otherwise cause corrosive structural damage to the POTW, City personnel or equipment. In cases where pH is continuously monitored, a violation is deemed to have occurred if the pH falls outside the 5.5 to 10.0 range more than 60 minutes in any one calendar day beginning at midnight and/or more than seven hours 26 minutes in any one calendar month, except that any discharge below 5.0 or above 11.0 is a violation.
- 5) Pollutants, including oxygen- demanding pollutants (BODs, etc) released at a flow rate and/ or pollutant concentration- which, either singly or by interaction with other pollutants, to pass through or interfere with the POTW, any wastewater treatment or sludge process, or constitute a hazard to humans or animals.
- 6) Noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sanitary sewers for maintenance and repair.
- 7) Any substance which may cause the treatment plant effluent or any other residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the system cause the City to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other State requirements applicable to the sludge use and disposal practices being used by the City.
- 8) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plants effluent thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life.

9) Any wastewater having a temperature greater than 150°F(55°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F(40°C).

10) Any wastewater containing any radioactive waste or isotopes except as specifically approved by the Director in compliance with applicable State Federal regulations.

11) Any pollutants which result in the presence of toxic gases, vapor or fumes within the system in a quantity that may cause worker health and safety problems.

12) Any trucked or hauled pollutants.

13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, deionized water, non-contacting cooling water and unpolluted industrial wastewater, unless specifically authorized by the Director.

14) Sludges, screenings, or other residues from the pretreatment of industrial wastes.

15) Medical wastes, except as specifically authorized by the Director in a wastewater discharge permit.

16) Material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfered with the POTW.

17) Material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Director.

18) Wastewater causing, alone or in conjunction with other sources, the treatment plant effluent to fail toxicity test.

19) Recognizable portions of the human or animal anatomy.

20) Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.

21) Any wastewater from dry cleaning machines.

22) Wastewater discharging from Dental facilities which contain mercury shall be provided with an approved amalgam separator.

23) Wastes prohibited by this section shall not be processed or stored in such a manner that these wastes could be discharged to the POTW.

(2) National Categorical Pretreatment Standards

(a) Users must comply with the categorical Pretreatment Standards found in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein. The City shall recognize any variance to the Categorical Standards authorized by the DEQ under 40 CFR 403.13 for fundamentally difference factors from those considered by the EPA when developing the categorical pretreatment standard.

(b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403 .6(e) using the combined waste stream formula.

(c) Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the City may impose equivalent concentration or mass limits in accordance with Section (1) and (2) of this section.

1) Equivalent Concentration Limits: When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the City may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

2) The City may convert the mass limits of the categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Director.

When converting such limits to concentration limits, the City will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 8.302(6) of this Chapter. In addition, the City will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available.

3) Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section 8.302(2) in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.

(d) Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(e) Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the City within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the City of such

anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

(3) State Requirements. Users must comply with State requirements and limitations and discharges to the POTW shall be met by all users which are subject to such limitations in any instance in which they are more stringent than Federal requirements and limitations or those in this ordinance.

(4) Local Limits

(a) Authority to Establish Local Limits: The City is authorized to establish Local Limits pursuant to 40 CFR 403.5(c). The Director may develop BMP's by ordinance or in individual wastewater permits to implement Local Limits and 8.032.

(b) Numerical Local Limits.

1) No nonresidential user shall discharge wastewater containing restricted substances into the POTW in excess of limitations specified in its Wastewater Discharge Permit or adopted, by resolution, by the City. The Director shall publish and revise, from time to time, standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Chapter. Standards published in accordance with this Section will be deemed Pretreatment Standards for the purposes of Section 307(d) of the Act.

(a) At their discretion, the Director may impose mass limitations in addition to or in place of the concentration based limitations referenced above. The more stringent of either the categorical standards or the specific pollutant limitations for a given pollutant will be specified in the Wastewater Discharge Permit.

(b) Specific effluent limits shall not be developed and enforced without individual notices to persons or groups who have requested such notice and an opportunity to respond.

(5) City's Right to Revision. The City reserves the right to establish, by ordinance or in wastewater permit, more stringent limitations or requirements or discharges to the POTW if deemed necessary to comply with the objectives presented in this Chapter.

(6) Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard, or requirement. The City may impose mass limitations on Users who are using dilution to meet applicable pretreatment standards or regulations, or in other cases when the impositions of mass limitation is appropriate.

(7) Authority to Condition or Deny Industrial Discharge. The City reserves the right to Condition or deny any, or all industrial discharges to the City Sanitary Sewer system.

8.304 Pretreatment of Wastewater

(1) Pretreatment Facilities

(a) Users shall provide necessary wastewater treatment as necessary to comply with this Chapter and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 8.302, within the time limitations specified by the Director, EPA, or the State, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility.

(b) The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Chapter.

(2) Additional Pretreatment Measures

(a) Whenever deemed necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharge only into specific sanitary sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Chapter.

(b) The City may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.

(c) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter, even though a wastewater discharge permit is not issued.

(3) Accidental Discharge/Slug Discharge Control Plans. The City shall evaluate whether each SIU needs a discharge/Slug discharge control plan or other action to control Slug discharges. The City may require any User to develop, submit for approval and implement such a plan or take such other action that may be necessary to control Slug Discharges, Alternatively, the City may develop such plan for any User.

(a) An accidental discharge/Slug discharge plan shall address, at a minimum, the following:

- 1) Description of discharge practices; including non-routine batch discharges.
- 2) Description of stored chemicals.

3) Procedures for immediately notifying the Director of any accidental or Slug discharge, as required by this Chapter;

(4) Procedures to prevent adverse impact from any accidental or Slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(5) Failure to comply with Spill/slug control plan conditions shall subject the permittee to enforcement action.

8.306 Wastewater Discharge Permit

(1) Authority to Require Data Disclosure. When requested by the Director, a Users whether operating under a wastewater discharge permit or not; and whether the User meets the criteria of a significant industrial user or not; the User must submit information on the nature and characteristics of all production processes; material storage, and their wastewater generated on site. The user must submit this data within thirty (30) days of the request. The Director is authorized to prepare a form for this purpose and may periodically require industrial users to update this information.

(2) Wastewater Discharge Permit Requirement

(a) SIU Wastewater Discharge Permit Required. No significant industrial users shall discharge to the POTW without first obtaining an individual wastewater permit from the Director, except that a SIU that has filed a timely application pursuant to Section 8.306(3) of the chapter may continue to discharge for the period of time specified therein.

(b) Other Users May Obtain Wastewater Discharge Permit: The Director may require other users, to obtain individual wastewater permits as necessary to carry out the purposes of this chapter.

(c) Violation of Wastewater Discharge Permit. Any violation of the terms and conditions of an individual wastewater discharge permit shall be deemed a violation of this Chapter and subjects the wastewater discharge permittee to the sanctions set out in Sections 8.602 through 8.606 of this Chapter. Obtaining an individual wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(3) Permitting Existing Connections. Any user required to obtain an individual discharge permit who was discharging wastewater into the POTW prior to the effective date of this Chapter and who wishes to continue such discharges in the future, shall within ninety (90) days after said date, apply to the City for an individual wastewater permit in accordance with Section 8.306(5) below, and shall not cause or allow discharges to the POTW to continue after one hundred

eighty (180) days of the effective date of this Chapter except in accordance with the permit issues by the Director.

(4) Permitting New Connections. Any SIU proposing to begin or recommence discharging industrial waste into the POTW must obtain a wastewater permit prior to beginning or recommending such discharge. An application for this individual wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(5) Wastewater Permit Application Contents. All users required to obtain a individual wastewater discharge permit must submit a permit application. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision. The City may require Users to submit all or some of the following information as part of a permit application:

(a) Identifying Information. The name, mailing address and location (if different from mailing address) of the facility, including the name of the operator and owner, Contact information, descriptions of the activities, facilities, and plant production processes on the premises;

(b) Environmental Permits. A list of any environmental control permits held by or for the facility;

(c) Description of Operations. A brief description of the nature, average rate of production (including each product produced by type, amount, processes and rate of production) and Standard Industrial Classification (SIC) or North American Industry Classification System (NAIS) of the operations carried out by such user. This description should include a schematic process diagram which indicates pints of discharge to the POTW from the regulated processes, codes for pretreatment the industry as a whole and any processes for which categorical pretreatment standards have been promulgated;

(d) Types of waste generated and a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally discharged to the POTW;

(e) Number and type of employees, and hours or operation, and proposed or actual hours of operation;

(f) Type and amount of raw materials processed (average and maximum per day);

(g) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation and all points of discharge;

(h) Time and duration of the discharge;

(i) The location for monitoring all wastes covered by the permit;

(j) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams as necessary to use the combined waste stream formula in 40 CFR 403.6(e).

(k) Measurement of Pollutants.

1) The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

2) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the City, of regulated pollutants in the discharge from each regulated process.

3) Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

4) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 8.310(10) of this Chapter. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard.

5) Sampling must be performed in accordance with procedures set out in Section 8.310(11) of this Chapter.

(l) Any other information as may be deemed by the Director to be necessary to evaluate the permit application.

(6) Application Signatories and Certification.

(a) All wastewater discharge permit applications, user reports and certification statements must contain the following certification statement and be signed by an authorized representative of the user:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization

satisfying the requirements of this Section must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

(c) A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the signed certification statement in Section 8.310(14).

(7) Wastewater Permit Decisions The Director will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete permit application, the Director will determine whether or not to issue an individual wastewater discharge permit. The City may deny any application for a wastewater discharge permit.

8.308 Wastewater Permit Issuance

(1) Permit Duration. Permits shall be issued for a specific time period not to exceed five (5) years. A permit may be issued for a period less than five (5) years at the discretion of the Director. Each permit will indicate a specific date on which it will expire.

(2) Permit Contents. Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director to prevent pass through or interference and to protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facility sludge management and disposal, and protect against damage to the POTW.

(a) Wastewater Permits must contain:

1) A statement that indicates wastewater discharge permit issuance date, expiration date and effective date.

2) A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new owner or operator with a copy of the existing permit;

3) Effluent limits, including Best Management Practices, based on applicable standards in Federal, State, and local law;

4) Self-monitoring, sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants (or Best Management Practices) to be monitored, sampling location, sampling frequency, and sample type based on Federal State and local law;

5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State or local laws.

6) Requirement to control Slug Discharges, if determined by the Director to be necessary. Significant Industrial Users are required to notify the Director immediately of any changes at its facility affecting the potential for a Slug Discharge.

(b) Wastewater Discharge Permits may contain, but need not be limited to, the following:

- 1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;
- 2) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works;
- 3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- 4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;
- 5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged into the POTW;
- 6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;
- 7) A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit;
- 8) Other conditions as deemed appropriate by the Director to ensure compliance with this Chapter; and State and Federal laws, rules, and regulations; the term of the permit.

(3) Permit Issuance Process

(a) Permit Appeals. Any person including the industrial user, may petition the City to reconsider the terms of the permit within ten (10) days of the issuance of the final permit.

(b) Failure to submit a timely petition for review shall be deemed a waiver of the administrative appeal.

(c) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative conditions, if any, it seeks to place in the permit.

(d) The effectiveness of the permit shall not be stayed pending the appeal.

(e) If the City fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a

permit, or not modify a permit shall be considered final administrative action for purposes of judicial review.

(f) Aggrieved parties seeking judicial review of administrative permit decisions must do so by complaint with the Circuit Court for Clackamas County, State of Oregon within thirty (30) days of the final administrative decision.

(4) Permit Modifications. The Director may modify the permit for good cause and at any time including, but not limited to, the following:

(a) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;

(b) To address signification alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance;

(c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(d) Information indicating that the permitted discharge poses a threat to the POTW, City personnel, of the receiving waters;

(e) Violation of the terms or conditions of the wastewater discharge permit;

(f) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;

(g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 401.13;

(h) To correct typographical or other errors in the permit;

(i) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

(5) Permit Transfer.

(a) Wastewater Discharge Permits may be transferred to a new owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Director and the Director approves the permit transfer. Failure to provide advance notice of a transfer renders the permit void as of the date of facility transfer, and the new owner will be consider in violation of the City Codes for discharging without a permit. The notice must include a written certification to the new owner which:

1) States that the new owner has no immediate intent to change the facility's operations and processes;

- 2) Identifies the specific date on which the transfer is to occur;
- 3) Acknowledges full responsibility for complying with the existing permit.

(6) Permit Revocation

(a) Wastewater discharge permits may be revoked for the following reasons:

- 1) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- 2) Failure to provide prior notification to the City of changed conditions pursuant to Section 8.310(5);
- 3) Misrepresenting or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- 4) Falsifying self-monitoring reports;
- 5) Tampering with monitoring equipment;
- 6) Refusing to allow the City timely access to the facility premises and records;
- 7) Failure to meet effluent limitations;
- 8) Failure to pay fines;
- 9) Failure to pay sewer charges;
- 10) Failure to meet compliance schedules;
- 11) Failure to complete a wastewater survey or the wastewater discharge permit application;
- 12) Failure to provide advance notice of the transfer of business ownership of a permitted facility;
- 13) Violation of any pretreatment standard or requirement or any terms of the permit or this Chapter;
- 14) Upon cessation of operations.
- 15) Upon issuance of a new wastewater discharge permit to the User.

(7) Permit Renewal. A User with an expiring wastewater discharge permit shall apply for wastewater discharge permit renewal by submitting a complete permit application, in accordance

with Section 8.306 of this Chapter, a minimum of ninety (90) days prior to the expiration of the User's existing wastewater discharge permit. The existing permit shall remain in effect until the renewed permit is issued, providing the User has submitted the renewal application ninety (90) days prior to the expiration of the User's existing wastewater discharge permit. If the User did not comply with the renewal application submittal criteria, the User will not be authorized to continue discharging past the expiration date of the existing permit without the written authorization of the City.

(8) Regulation of Wastewater Received From Other Jurisdictions.

(a) The City may accept wastewater from individual industrial users located in other jurisdictions, or other municipalities under the following conditions:

1) Municipalities – the municipality must develop and implement a sanitary sewer use ordinance that meets, or exceeds, the Wilsonville Industrial Wastewater Regulations, Chapter 8. The municipality must submit their request in writing and the request for Extra-Jurisdictional wastewater treatment a list of industrial users within their jurisdiction, the nature and volume of the industrial discharges, the combined discharge from the municipality that will be treated by the Wilsonville wastewater treatment plant. Municipalities will not be issued wastewater discharge permits. Municipalities must enter into an Extra-Jurisdictional Agreement between the City of Wilsonville and the requesting municipality.

2) Extra-Jurisdictional Industrial Users – the industrial user must submit a Wastewater Permit Application to the City. The Industrial User must agree to comply with the terms and conditions of the permit, including right-of-entry for purposes of inspection, and sampling, enforcement actions specified in the permit.

(b) An inter-jurisdictional agreement, as required by paragraph A, above, shall contain the following conditions:

1) A requirement for the contributing municipality to adopt a sanitary sewer use ordinance which is at least as stringent as this Chapter and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 8.302 of this Chapter. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the Wilsonville ordinance or Local Limits;

2) A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;

3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing municipality and the City;

- 4) A requirement for the contributing municipality to provide the City with access to all information that the contributing municipality obtains as part of its pretreatment activities;
- 5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
- 6) Requirements for monitoring the contributing municipality's discharge;
- 7) A provision ensuring the City access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City; and
- 8) A provision specifying remedies available for breach of the terms of the inter-jurisdictional agreement.
- 9) Where the contributing municipality has primary responsibility for permitting, compliance monitoring, or enforcement, the inter-jurisdictional agreement should specify that Wilsonville shall have the right to take action to enforce the terms of the contributing municipality's ordinance or to impose and enforce Pretreatment Standards and Requirements directly against dischargers in the event the contributing jurisdiction is unable or unwilling to take such action.

8.310 Reporting Requirements

(1) Baseline Monitoring Reports.

(a) Users that become subject to new or revised categorical Pretreatment Standards are required to comply with the following reporting requirements even if they have been designated a Non-Significant Categorical Industrial Users

(b) Within either 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing Categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard shall be required to submit to the City a report which contains the information listed in paragraph (b) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(c) Users described above shall submit the information set forth below:

- 1) All information required in Section 8.306(2) through Section 8.306(7)
- 2) Measurement of Pollutant.

The City may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(a) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(b) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(c) Sampling and analysis shall be performed in accordance with Section 8.310(10);

(d) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW

(e) Compliance Certification. A statement, reviewed by the User's authorized representative and certified to be a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operations and maintenance (O&M) and/or additional pretreatment is required in order to meet pretreatment standards and requirements.

(f) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest possible schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 8.310(2) of this Chapter; and

(g) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 8.310(3) and signed by an Authorized Representative.

The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(2) Compliance Schedule Progress Reports. The following conditions shall apply to the compliance schedule required by Section 8.310(1) of this Chapter:

(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of

additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(b) No increment referred to above shall exceed nine (9) months;

(c) The User shall submit a progress report to the City no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and

(d) In no event shall more than nine (9) months elapse between such progress reports to the City.

(3) Reports on Compliance with Categorical Pretreatment Standard Deadline

a) Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the City a report containing the information described in Section 8.306(5) of this Chapter. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 8.302(2), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 8.310(14) of this Chapter. All sampling will be done in conformance with Section 8.310.

(4) Periodic Compliance Reports.

All SIUs are required to submit periodic compliance reports even if they have been designated a Non-Significant Categorical Industrial User under the provisions of Section 8.310(4).

(a) Except as specified in Section 8.310(4), all Significant Industrial Users must, at a frequency determined by the City submit no less than twice per year (June and December, or on dates specified, reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

(b) All periodic compliance reports must be signed and certified in accordance with Section 8.310(14) of this Chapter.

(c) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(d) If a User subject to the reporting requirement in this Section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City, using the procedures prescribed in Section 8.310(11) of this Chapter, the results of this monitoring shall be included in the report.

(5) Report of Changed Conditions. Each user must notify the Director of any significant changes to the User's operations or system which might alter the nature, quality, or volume at least thirty (30) days before the change.

(a) The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater permit application under Section 8.306(5), if necessary.

(b) The Director may issue a wastewater permit under Section 8.308(7) or modify an existing wastewater discharge permit under Section 8.308(4) in response to changed conditions or anticipated changed conditions.

(6) Reports of Potential Problems.

(a) In the case of any discharge, including but not limited to accidental discharge non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW the user shall immediately telephone and notify the City of the incident. This notification shall include the location and discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following an accidental discharge, the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Chapter.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of an accidental discharge as described above. Employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of all the emergency notification procedures.

(d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

(7) Reports from Un-Permitted Users. All users not required to obtain an individual wastewater permit shall provide appropriate reports to the City as the Director may require.

(8) Notice of Violation/Repeat Sampling and Reporting

(a) If sampling performed by a User indicates a violation, the User must notify the City within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation.

(9) Notification of the Discharge of Hazardous Waste

(a) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division City, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one-hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 8.310(5) of this Chapter. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of Sections 8.310(1), 8.310(3), and 8.310(4) of this Chapter.

(b) Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the City, the EPA Regional Waste Management Waste Division City, and State

hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Chapter, a permit issued hereunder, or any applicable Federal or State law.

(10) Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by EPA.

(11) Sample Collection.

(a) Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(b) The City shall establish the frequency of monitoring necessary to assess and assure compliance by the User with applicable Pretreatment Standards and Requirements.

(c) Except as indicated in Section (d) and (e) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows:

1) For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field;

2) For volatile organics and oil and grease, the samples may be composited in the laboratory.

3) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(d) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(e) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 8.310(1) and 8.310(3), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by paragraphs Section 8.310(4), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(12) Date of Receipt of Reports Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(13) Recordkeeping Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 8.302(4). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the City.

(14) Certification Statements

(a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 8.306(6); Users submitting baseline monitoring reports under Section 8.310(1); Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 8.310(3); Users submitting periodic compliance reports required by Section 8.310(4), and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 8.310(4). The following certification statement must be signed by an Authorized Representative:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the

information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the following certification statement signed in accordance with the signatory requirements in Section 8.310(14). This certification must accompany an alternative report required by the City:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR _____, I certify that, to the best of my knowledge and belief that during the period from _____, _____ to _____, _____ [months, days, year]:

1) The facility described as _____ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 8.006 (b) 1-3.

2) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

3) The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

4) The Facility never discharged concentrated untreated wastewater.

8.312 Compliance Monitoring

(1) Right of Entry; Inspection and Sampling.

(a) The City, an authorized representative of the US EPA and/or authorized representative of the Oregon DEQ shall have the right to enter the premises of any user to ascertain whether the purpose of this Chapter is being met and all requirements are being complied with. Users shall allow authorized personnel ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(b) Where a user has security measures in force that require proper identification and clearance before entry into their premises, the industrial user shall make necessary arrangements with its security guards, so that upon presentation of suitable identification, personnel from the City, State and US EPA will be permitted to enter, without delay, for the purposes of performing specific responsibilities.

(c) The City, State, and US EPA shall have the right to set up or require installation of, on the industrial user’s property, such devices as are necessary to conduct sampling, and/or metering of the user’s operations.

(d) The City may require the User to install monitoring equipment as necessary. The facility’s sampling and monitoring equipment shall be maintained at all times in a safe and

proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy. The location of the monitoring facilities shall provide ample room in or near the monitored facility to allow accurate sampling and preparation of samples and analysis and whether constructed on public or private property, the monitoring facilities should be provided in accordance with the City's requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the City to perform independent monitoring activities

(e) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(f) Unreasonable delays in allowing the City access to the user's premises shall be a violation of this Chapter.

(2) Search Warrants. If the Director has been refused access to a building, structure or property or any part thereof, and if the Director has probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect as part of a routine inspection program of the City designed to protect the overall public health, safety and welfare of the community, then upon application by the City Attorney, the Municipal Court Judge of the City may issue a search and/or seizure warrant describing herein the specific location subject to the warrant. The warrant shall specify what, if anything, may be search and/or seized on the property described. Such warrant shall be served at reasonable hours by the Director in the company of a uniformed police officer of the City.

8.314 Confidential Information

(1) Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.

8.316 Publication of Users in Significant Noncompliance

(1) The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 8.302;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 8.302 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH.

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 8.302 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.

8.318 Affirmative Defense

(1) Upset

(a) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c), below, are met.

(c) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- 1) An upset occurred and the User can identify the cause(s) of the upset;
- 2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- 3) The User has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:
 - a) A description of the indirect discharge and cause of noncompliance;
 - b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
 - c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (d) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (e) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.
- (f) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(2) Prohibited Discharge Standards. User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibition and the specific prohibitions in Section 8.302 of this chapter if it can prove it did not know or have reason to know that its discharge alone or in conjunction with other discharges, would cause pass through or interference and that either:

(a) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to and during the pass through or interference; or

(b) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with the NPDES permit, and in the case of interference, in compliance with applicable sludge use or disposal requirements.

(3) Bypass.

(a) For the purposes of this Section

1) Bypass means the intentional diversion of waste streams from any portion of a User's treatment facility.

2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (c) and (d).

(c) Bypass Notification

1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least 10 days before the date of the bypass.

2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Director within twenty-four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

(d) Bypass is prohibited, and the Director may take enforcement action against an Industrial User for a bypass, unless;

1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintaining during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3) The Industrial User submitted notices as required under paragraph (c) of this section.

4) The Director may approve an anticipated bypass after considering its adverse affects, if the Director determines that it will meet paragraph (d) 1) of this Section.

8.320 Pretreatment Charges and Fees

(1) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:

(a) Fees for wastewater discharge permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge;

(c) Fees for reviewing monitoring reports and certification statements submitted by Users;

(d) Fees for reviewing and responding to slug discharge procedures and construction;

(e) Fees for filing appeals;

(f) Fees to recover administrative and legal costs (not included in Section 8.604, Section 8.606 and 8.316) associated with the enforcement activity taken by the City to address IU noncompliance; and

(g) Other fees as the City may deem necessary to carry out the requirements contained herein.

(2) These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.

SOLID WASTE DISPOSAL

8.400 Garbage – General Regulations.

(1) The regulation of the disposal and hauling of garbage in the City under the provisions of this Code shall be under the supervision of the City Council or an agent or employee of the City, duly assigned by the City Council and the powers and duties of said Council or as designated shall include, though not exclusively, authority to conduct periodic inspections to insure full compliance with terms and provisions of these sections and to arbitrate or provide for arbitration of any and all disputes arising between the Garbage Contractor or Garbage Franchisee of the City and the citizens of the City.

(2) It shall be unlawful for any person in possession, charge or in control of any dwelling, apartment, trailer camp, restaurant, camp, place of business or manufacturing establishment where garbage is created or accumulated, to fail at all times to keep portable cans or containers of standard type and construction and to deposit said garbage therein, provided however, that stiff paper products and wooden or metal waste matter may remain outside of cans or containers, if neatly and orderly stored. Said cans or containers for garbage shall be strong, watertight, rodent proof, insect proof and be of capacity approved by the City and shall have tight fitting lids. Said cans or containers shall be kept tightly closed at all times except when being emptied or filled and shall be kept and maintained at a place or places reasonably accessible to garbage haulers at first floor or ground level. Recyclable materials containers may be open if the materials are not likely to attract animals.

(3) It shall be unlawful to burn, dump, collect, remove or in any other manner accumulate or dispose of garbage upon any street, alley, public place or private property, within the City, otherwise than as herein provided. Waste paper, rubbish and debris, brush, grass, wood and cuttings from trees, but excepting paper, cardboard or wood containers in commercial quantities, may be burned in furnaces, outside fireplaces or incinerators on private property in keeping with State and County laws, or upon special permit from the fire chief of the City, they may be burned in open fires. It shall always be unlawful to burn, within City limits, any wet garbage or other substance which creates foul or obnoxious orders. Any unauthorized accumulation of garbage on any premises is hereby declared to be a nuisance and is prohibited. Failure to remove any existing accumulation of garbage within thirty (30) days after the effective date of this Code shall be deemed in violation of this Section.

(4) It shall be unlawful for any person to haul garbage upon the streets and public thoroughfares of the City, except as otherwise provided herein.

(5) All persons in the City are hereby required to dispose of all perishable garbage before the same shall become offensive and to dispose of all non-perishable garbage promptly and not permit the same to accumulate on or about the premises and to dispose of the same by burning, burying or such manner as shall not create a nuisance and as permitted by these sections.

(6) Any person may transport garbage produced by himself or itself upon the streets of the City provided that such garbage must be hauled in such manner as to prevent leakage or litter upon the streets and must be deposited upon designated dumping grounds or disposed of in a manner not inconsistent with these sections.

(7) Except as provided herein, it shall be unlawful for any person, firm or corporation, other than a person, firm or corporation under contract with the City as provided in Section 8.402 of this Code to gather and haul garbage over the streets of the City.

8.402 Garbage – Contract Garbage Hauler

(1) The Mayor of the City is hereby authorized and directed to enter into a contract with a person, firm or corporation for a period of five (5) successive years from and after the effective date of this Code granting to the said person, firm or corporation the exclusive right to collect, convey or dispose of all garbage as herein defined and which accumulates in the City. The terms and conditions of such contract to be first approved by the City Council. Upon expiration of said contract by the lapse of time or otherwise the Mayor of the City is hereby authorized to enter into a renewal contract or other contracts with other persons, firms, or corporations as may be required for the collection, conveyance, removal and disposal of garbage within the City.

(2) For the right to collect and haul garbage over the streets of the City, the Contractor shall pay to the City as a license and inspection fee, annually, and in advance, an amount equal to three percent (3%) of the gross revenue collected by the Contractor for garbage collections services; and fee to be based upon the prior year's gross revenue.

(3) The rates and compensation for the service rendered by the contract garbage hauler shall be reasonable and uniform and shall not be in excess of a schedule of charges and compensation to be fixed by the contract. Provided that such rates and charges may be changed from time to time after negotiations with the Contractor.

8.404 Garbage – Violation.

Any person violating any of these terms of this Chapter shall upon a first conviction thereof, be punished for a violation pursuant to Section 1.012 of the Wilsonville Code and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor pursuant to Section 1.011 of the Wilsonville Code. In addition, upon a conviction, a person shall be liable for the costs of prosecution.

STORMWATER

8.500 General Provisions

(1) Purpose. Provides for the building of and connection to public stormwater facilities and for the uniform regulation of discharges to the public stormwater system through the issuance of permits and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(2) Application to Users within and outside of City limits. Provisions of this article shall apply to users within the City limits and to users outside the City limits who, by contract or agreement with the City, are included as users of the public stormwater system.

8.502 Stormwater System Construction

(1) No unauthorized person shall uncover, make any connections to or opening into the public stormwater system, use, alter or disturb any storm sewer lateral or appurtenance thereof without first obtaining a permit from the City. In each case, the owner or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the City's authorized stormwater representative.

(2) All costs and expenses incidental to the installation and connection of stormwater facilities shall be borne by the owner. The owner shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of stormwater facilities or connections to the public stormwater system.

(3) The size, slope, alignment, construction materials of stormwater facilities, and the methods to be used excavating, placing of the pipe or other facilities, jointing, testing and backfilling the trench, shall all conform to the requirements of the State of Oregon Plumbing Specialty Code and other applicable rules and regulations of the City, including the City's Public Works Standards.

(4) The connection of the stormwater facilities to the public stormwater system shall conform to the requirements of the State of Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City, including the City's Public Works Standards. Any deviation from prescribed procedures and materials must be approved by the City's authorized stormwater representative before installation.

(5) The applicant shall notify the City's authorized stormwater representative when the stormwater facilities are ready for inspection. The connection shall be made under the supervision of the City's authorized stormwater representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the applicant's or owner's expense in a manner satisfactory to the City, in accordance with the City's requirements.

(6) All excavations for stormwater facility installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

8.504 Use of Public Stormwater System

(1) No unauthorized person shall uncover, make any connections with or openings into, use, alter, or disturb, any public stormwater system or appurtenance thereof without first obtaining written permission from the City.

(2) Stormwater shall be discharged to storm sewers and natural outlets under the authority and regulations of the NPDES Municipal Stormwater Permit Program, administered by the Oregon Department of Environmental Quality.

(3) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the public stormwater system.

(4) It shall be unlawful to discharge in or into any natural outlet or stormwater sewer inlet (catch basin, grate, roof downspout, etc.) within the City of Wilsonville, or in any area under the jurisdiction of said City, any sewage or other polluted water.

(5) Stormwater shall be protected from soap, wax, or other pollution runoff from vehicle wash facility entrance and exits.

8.506 Public Stormwater System – Property Damage Prohibited

(1) No unauthorized person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the public stormwater system. Any person violating this provision and as a result thereof damages any part of the public stormwater system, shall be subject to arrest and prosecution under the laws of the State of Oregon as set forth in ORS 164.345 through 164.365.

8.508 Right of Entry

(1) Where it is necessary to perform inspections, measurements, sampling and/or testing, to enforce the provisions of this code, or where the City's authorized stormwater representative has reasonable cause to believe that there exists upon the premises a condition which is contrary to or in violation of this code which makes the premises unsafe, dangerous or hazardous, the City's authorized stormwater representative is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this code. Provided, however, that if such premises is occupied that credentials be presented to the occupant and entry requested. If such premises are unoccupied, the City's authorized stormwater representative shall first make a reasonable effort to locate the owner or other person having charge or control of the

premises and request entry. If entry is refused, the City's authorized stormwater representative shall have recourse to the remedies provided by law to secure entry.

(2) The premises shall be maintained in a safe condition by the owner or a person having charge or control of the premises and upon contact by the City's authorized stormwater representative the owner or a person having charge or control of the premises shall have a duty to notify City's authorized stormwater representative of any safety rules or unsafe conditions applicable to the premises.

(3) Not with standing, Section 8.508(1) above, the City's authorized stormwater representative shall be permitted to enter all private properties through which the City holds an easement, according to the terms of the easement. Any storm water facility work within said easement shall be done according to the regulation provided in this Code and/or the Public Works Standards.

8.510 Discharge of Pollutants

(1) The commencement, conduct, or continuance of any non-stormwater discharge to the public stormwater system is prohibited and is a violation of this ordinance, except as described below.

(2) The prohibition shall not apply to any non-stormwater discharge permitted or approved under an Industrial or Municipal NPDES Stormwater permit, waiver, or discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).

- (a) Except as provided in subsection (3), the prohibition shall not apply to the following non-stormwater discharges to the public stormwater system: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the MS4, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, de-chlorinated swimming pool discharges, street wash water, and flows from firefighting.
- (b) "Street wash water" is defined for purposes of this section to be water that originates from publicly-financed street cleaning activities consistent with the City's NPDES municipal stormwater permit.
- (c) Discharge of flows to the public or private stormwater system from private washing of sidewalks, streets and parking lots are discouraged to the maximum extent practicable.

(3) The City may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection (2) if at any time the City determines that the discharge is, was, or will be a significant source of pollution.

8.512 Discharge in Violation of Permit

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES Stormwater permit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

8.514 Waste Disposal Prohibitions

(1) No person may cause or contribute to pollution, including but not limited to any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations in or to the public stormwater system.

(2) Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not discharge directly to a private or public stormwater system except as allowed under Section 8.510 of this code; this includes but is not limited to outdoor commercial, industrial or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

8.516 General Discharge Prohibitions

(1) It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:

- (a) Any discharge having a visible sheen, or containing floating solids or discoloration (including but not limited to dyes and inks);
- (b) Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic chemicals in toxic concentrations;
- (c) Any discharge which causes or may cause damage, interference, nuisance or hazard to the public stormwater system or the City personnel; and
- (d) Any discharge containing human sanitary waste or animal feces.

8.518 Compliance with Industrial NPDES Stormwater Permits

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES Stormwater permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by State and Federal regulations. Proof of compliance with said permits may be required in a form acceptable to the City prior to issuance of any grading, building, occupancy permits or business license.

8.520 Compliance with Local, State, and Federal Regulations

All users of the public stormwater system and any person or entity whose actions may affect the system shall comply with all applicable local, state and federal laws. Compliance with the requirements of this chapter shall in no way substitute for or eliminate the necessity for compliance with applicable local, state and federal, state laws.

8.522 Conflicts with Existing and Future Regulatory Requirements of Other Agencies

Any provisions or limitation of this chapter and any rules adopted pursuant hereto are superseded and supplemented by any applicable local, state and federal requirements existing or adopted subsequent hereto, which are more stringent than the provisions and limitations contained herein.

8.524 Accidental Spill Prevention and Control

Accidental spills and releases by dischargers who are not required to obtain a NPDES Stormwater permit but who handle, store or use hazardous or toxic substances or discharges prohibited under Section 8.512 and there is a reportable quantity as defined in OAR 340-142-0050, on their sites shall prepare and submit to the City an Accidental Spill Prevention and Control Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this Section.

8.526 Notification of Spills

(1) As soon as any person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:

- (a) Begin containment procedures;
- (b) Notify proper emergency personnel in case of an emergency;
- (c) Notify appropriate city and/or state officials regarding the nature of the spill; and

- (d) Follow-up with the city regarding compliance and modified practices to minimize future spills, as appropriate.

(2) The notification requirements of this section are in addition to any other notification requirements set forth in local state, or Federal regulations and laws. The notification requirements do not relieve the person of necessary remediation.

8.528 Requirement to Eliminate Illicit Connections

(1) The City's authorized stormwater representative may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.

(2) If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.

8.530 Requirement to Remediate

Whenever the City finds that a discharge of pollutants is taking place or has taken place which will result in or has resulted in pollution of stormwater or the public stormwater system, the City's authorized stormwater representative may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the requirements of this Chapter.

8.532 Requirement to Monitor and Analyze

Whenever the City's authorized stormwater representative determines that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the City's authorized stormwater representative may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the City's authorized stormwater representative may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

8.534 Erosion Prevention and Sediment Control

(1) Any person performing construction work in the city shall comply with the provisions of this chapter and shall provide and maintain erosion and sediment controls that

prevent discharges of pollutants to the public stormwater system. Any person performing construction work in the city shall comply with the City's Public Works Standards which establishes standards and guidelines for implementing Best Management Practices designed to provide erosion prevention and sediment control from construction sites.

(2) The City's authorized stormwater representative may make periodic inspections to ensure compliance with the requirements of the Public Works Standards.

8.536 General Policy

(1) Application and Purpose. It is a City requirement to reduce the amount of sediment and other pollutants reaching public storm and surface water systems resulting from development, construction, grading, excavation, clearing, and any other activity that accelerates erosion, to the limits prescribed herein. These provisions shall apply to all land within the City.

(a) Regulated Activities. To minimize the adverse effects of construction on the environment, Erosion Control Permits are required (unless specifically exempted from this requirement as provided herein) for the following activities:

- 1) All activities requiring a Public Works Permit or a Grading Permit.
- 2) Projects involving construction of public trails, bike paths and pedestrian ways, public or private streets, and underground utilities in existing public rights-of-way or in areas designated in the City's Comprehensive Plan as Significant Resource Overlay Zones.
- 3) All construction projects, including but not limited to capital improvements, Public Works construction and utility installations.

(b) Minimum Requirements:

- 1) No visible or measurable dust, mud, muddy water, or rock shall exit the site, enter the public or private systems or be deposited into any water body.
- 2) Ground-disturbing activities requiring a permit shall install erosion and sediment control (ESC) measures and have them inspected and approved by the City's inspector before any ground breaking occurs.
- 3) During the construction period, these ESC measures shall be upgraded as needed for worst-case storm events and to ensure that sediment and sediment-laden water does not leave the site.

- (c) To meet these minimum standards, responsible parties shall:
- 1) As the first step in development, install ESC measures intended to keep soil on site and out of water bodies, storm drainage systems and the public right of way.
 - 2) Remove any soil that enters the public storm system, roadway or right of way.
 - 3) Protect stormwater inlets that are functioning during the course of the project by means of approved ESC measures so that sediment-laden water cannot enter the inlets without first being filtered.
 - 4) Apply permanent or temporary soil stabilization to denuded development areas in conformance with the following schedule:
 - a. Between October 1 and April 30, all inactive denuded sites shall be provided with either temporary or permanent soil stabilization as soon as practicable after ground-disturbing activity occurs. The City will determine whether active construction exists.
 - b. Temporary erosion and sediment control measures to reduce dust and sediment transport shall be applied as soon as practicable before any ground-disturbing activity occurs and immediately when dusty conditions or any transport of sediment occurs.
 - c. Temporary measures shall be maintained until permanent measures are established.
- (d) Temporary and Permanent ESC Measures Required. City policy requires both temporary and permanent ESC measures for any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site.
- (e) If required by the City's authorized representative, construction activities shall be sequenced to reduce the amount and duration of soil exposure to erosion by wind, rain, runoff, and vehicle tracking. The construction schedule is an orderly listing of all major land disturbing activities together with the necessary erosion prevention and sediment control measures planned for a project. This type of schedule guides the applicant on project sequencing so that serious erosion and sedimentation problems can be avoided

(f) Duties of the Owner/Responsible Party. The Owner's responsible party shall properly install, operate and maintain both temporary and permanent measures as provided in this section and/or in an approved plan, to protect the environment during the term of the project. The responsible party shall also remove temporary erosion controls.

Nothing in these policies shall relieve any person or organization from the obligation to comply with the regulations or permits of any federal, state, or local authority.

8.538 Erosion Prohibited

(1) Visible or measurable erosion as determined by the City's authorized representative, that enters, or is likely to enter public storm or surface water systems is hereby prohibited and is a violation of these rules. The owner of the property and the permittee, together with any person who causes or allows erosion to occur, shall be considered to be in violation of these rules.

(2) In determining measurable erosion, the City will rely on the adopted Water Quality Standard not to be exceeded for the waters of the Willamette Basin (Oregon Administrative Rule 340-41-0340), which currently sets criteria for dissolved oxygen, temperature, turbidity, pH, bacteria, and total dissolved solids.

(3) An off-site sedimentation control facility may be utilized if it has been identified and approved in writing by the City's authorized representative, written approval is obtained from the respective property owner, and a written agreement for rehabilitation of the facility by the applicant or contractor is submitted to the City. The owner of the property or the applicant under a Public Works Permit, together with any person or persons, including but not limited to the contractor or the design engineer causing such erosion, shall be held responsible for violation of the City's standards.

8.540 Erosion Control Permits

(1) Except as noted herein, no person shall cause any change to improved or unimproved real property that causes, will cause, or is likely to cause, a temporary or permanent increase in the rate of soil erosion from the site without first obtaining a permit from the City and paying prescribed fees. Such changes to land shall include, but are not limited to, grading, excavating, filling, working of land, or stripping of soil or vegetation from land.

(2) Any work requiring a Grading Permit, as specified in the applicable Building Code, shall require an Erosion Control Permit, unless specifically exempted from this requirement as specified in subsection 5(C), below. Where a Grading Permit is being issued for

on-site work, the Grading Permit will include an Erosion Control Plan.

(3) No owner, utility company or contractor shall begin construction, grading, excavation, fill, or clearing of land without first verifying in writing that the City has issued an Erosion Control Permit covering such work, or the City has determined that no such Permit is required. No public agency or body shall undertake any public works project without first obtaining an Erosion Control Permit covering such work, or receiving a determination from the City that none is required.

(a) Construction on slopes greater than 5 percent, or on highly erodible soils, shall be subject to limitations or conditions of approval that may limit excavation or other construction from November 1 through April 30.

(b) Limits of work are to be specified in the Erosion Control Permit.

(c) The Contractor shall provide a tentative construction schedule and shall notify the City authorized representative at least 24 hours before the start of excavation or construction.

(4) No Erosion Control Permit (from the City) is required for the following:

(a) For work of a minor nature, provided that all of the following criteria are met:

1) The land development does not require a Public Works Permit, a Grading Permit or a development permit, from the City.

2) No land development activity or disturbance of land surface occurs within 100 feet of the Significant Resource Overlay Zone, as defined in the City's Comprehensive Plan.

3) The slope of the site is less than 12 percent.

4) The work on the site involves disturbance of less than 500 square feet of land surface.

5) The excavation, fill, or combination thereof involves a total of less than 20 cubic yards of material.

a. Permits and approvals for land division, interior improvements to an existing structure, and other approvals for which there is no physical disturbance to the surface of the land.

- b. Activities within the City that constitute accepted farming practices as defined in ORS 215.203, and which are permitted by City zoning.
- c. Exception from the permit requirement does not exempt the property owner from the responsibilities outlined herein.

8.542 Erosion Control Permit Process

- (1) Applications for Erosion Control Permit. Application for a Permit shall include:
 - (a) A grading and erosion control plan that contains methods and interim facilities to be constructed or used concurrently and to be operated during construction to control erosion.
 - (b) A site map showing:
 - 1) Existing and adjacent drainage including site run-on, public or private receiving water for drainage leaving the site and developed stormwater conveyance systems and facilities.
 - 2) Natural resource features to be protected on and adjacent to the site.
 - 3) Areas to remain undisturbed by construction activities.
 - 4) Sequence and locations of clearing, grubbing and grading, including stockpile locations, management and schedule of their removal.
 - 5) Locations and types of dust and erosion control facilities for each major project phase.
 - 6) Final landscaping plan, including hard surfaces, sodded or mulched areas, and areas to be seeded, including seed mix, rate, area, broadcast method and date of seeding.
 - (c) The grading and erosion control plan shall be designed to meet the requirements herein and shall be prepared using either of the following methods:
 - 1) The techniques and methods contained and prescribed in the Clackamas County Water Environment Services most current version of 'Erosion Prevention and Sediment Control Planning and Design Manual (this document is hereby adopted by reference), together with the City of Wilsonville's exceptions stated herein.

- 2) The Soil conservation Service’s Universal Soil Loss Equation or other equivalent methods established by Board rule to prepare a site-specific plan outlining protection techniques to control soil erosion and sediment transport from the site to less than one ton per acre per year.
- (d) All ESC plans shall include an erosion control legend, erosion control details, both pertaining to the project, and the City of Wilsonville’s Erosion and Sediment Control Notes, including the Sediment Fence Notes.
- (e) When required by the City, the Grading and Erosion Control Plan will be designed, approved, and managed by a Certified Professional in Erosion and Sediment Control (CPESE).

8.544 Maintenance

(1) The owner/applicant shall maintain the facilities and techniques contained in the approved Erosion Control Permit so as to assure that they remain effective during the construction or other permitted activity. If the facilities and techniques approved in an Erosion Control Permit are not effective or sufficient as determined through site inspection the permittee shall submit a revised plan within three (3) working days of written notification by the City. Upon approval of the revised plan by the City, the permittee shall immediately implement the additional facilities and techniques of the revised plan. Where erosion is occurring, the owner/applicant shall correct control measures immediately. The City will re-inspect for compliance.

8.546 Inspection

(1) Initial and final ESC inspections are required, and ground breaking may not occur until initial inspection has been approved. Tree protection shall be installed, inspected, and approved before any ESC measures are placed. An erosion and sediment control inspection shall not occur until tree inspection and approval has occurred.

8.548 Prevention and Cleanup of Tracks, Spills and Deposits

(1) No person shall drag, drop, track, or otherwise place or deposit, or permit to be deposited, mud, dirt, rock or other such debris upon a public street or into any part of public or private storm or surface water systems.

(2) Any such deposit of material shall be immediately removed using hand labor or mechanical means.

(3) No material shall be washed or flushed into any part of storm or surface water

systems without sediment control measures installed, including cleanup, to the satisfaction of the City.

8.550 Fees for Permit

(1) The City shall collect a fee to defray the costs of review of plans, administration, enforcement, and field inspection to carry out the rules contained herein.

8.552 Exceptions to Erosion Control Techniques and Methods

(1) The erosion control techniques and methods in the Clackamas County Water Environment Services' most current version of "Erosion Prevention and Sediment Control Planning and Design Manual" shall be used, with the following exceptions:

- (a) Gravel or rock construction entrances (two to three inch crushed aggregate) with geotextile fabric shall be required for each construction entrance. An entrance is required for each vehicle access point on each project and entrances shall be maintained for the duration of the project. Additional measures such as a wheel wash may be required to ensure that all paved areas are kept clean for the duration of the project. The owner/applicant is responsible for design and performance of the construction entrance. Under no circumstance shall vehicles or equipment enter a property adjacent to a stream, water course, wetland or storm or surface water facility such that it would not be possible to avoid contaminating or depositing mud, dirt, or debris into the water or wetland.
- (b) The use of straw bales as silt barriers is prohibited.
- (c) Silt barriers are not required on a site under the following circumstances:
 - 1) Where a Community Erosion Control Plan is in effect.
 - 2) Where there are no concentrated flows and the slope being protected has a grade of less than 2 percent.
 - 3) Where flows are collected by means of temporary or permanent grading or other techniques, such that the flows are routed to an approved settling pond, filtering system, or silt barrier.
 - 4) Where there are no concentrated flows, slopes are less than 10 percent, and where the runoff passes through a grassed area that is either owned by the applicant, or approved for such use in writing by the owner of the grassed area. The grassed area shall be at least equal in dimensions to the

area being protected.

5) Where the surface is protected by appropriate ground cover or matting.

(2) Neighborhood Erosion Control Plan. Any individual or group may submit a plan to control erosion from multiple lots. This shall be referred to as a “Neighborhood Erosion Control Plan.” In such cases, the group of lots will be evaluated as if they were one lot.

(a) If an individual lot in a Neighborhood Erosion Control Plan changes ownership, the new owners may either join the Neighborhood Erosion Control Plan (with the approval of the other “neighborhood” owner or owners), or will need to submit their own erosion control plan if erosion potential still exists on the parcel.

(b) If a lot changes ownership and the new owner does not join the Neighborhood Erosion Control Plan, the Plan shall be revised to provide for the exclusion.

(3) Protection Measure Removal. The erosion control facilities and techniques shall remain in place and be maintained in good condition until all disturbed soil areas are permanently stabilized by installation and establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion. Straw or plastic sheeting are to only be used as temporary measures during construction and are prohibited for use as ground cover for final inspection. A final erosion control inspection shall be required prior to any change in ownership of the subject property.

(4) Plastic Sheeting. Plastic sheeting may be used to protect small, highly erodible areas, or temporary stockpiles of material. If used, the path of concentrated flow from the plastic shall be protected from eroding.

(5) Ground Cover Establishment. On sites where vegetation and ground cover have been removed from more than one (1) acre of land, ground cover shall be re-established by seeding and mulching on or before September 1 with the ground cover established by October 15. As an alternative to seeding and mulching, or if ground cover is not established by October 15, the open areas shall be protected through the winter with straw mulch, erosion blankets, or other similar method. Ivy shall not be used as a ground cover for erosion control purposes.

8.554 1200-C and 1200-CN Permits (Construction Stormwater Discharge Permit)

(1) If the site requires a 1200-C permit from the Oregon Department of Environmental Quality (DEQ), an approved copy of the 1200-C Permit shall be submitted to the City before any clearing or grading will be allowed to proceed. Construction activities including clearing, grading, excavation, and stockpiling that will disturb five (5) or more acres and that may discharge to surface waters or conveyance systems leading to surface waters of the state,

require a DEQ 1200-C permit. The 1200-C permits are obtained directly from DEQ, and require a public notice period.

(2) A DEQ 1200-CN permit is required for construction activities that disturb between one (1) acre and five (5) acres as part of a common plan of development or sale if the larger common plan of development or sale will ultimately disturb one acre or more and which may discharge to surface waters or conveyance systems leading to surface waters of the state.

8.556 Activities in Wetlands

(1) Both the U.S. Army Corps of Engineers and the Oregon Department of State Lands have permit procedures for construction activities in wetlands that are within the jurisdiction of those agencies. Applicants for an Erosion Control Permit shall be required to demonstrate their compliance with all applicable requirements of those agencies, including any required mitigation.

(2) The construction of underground utilities in wetland areas shall require the use of impermeable barriers, designed and installed in such a manner as to avoid draining the wetlands.

8.558 Work in Flood-Prone Areas

(1) Work in flood-prone areas shall be subject to the requirements of Section 4.172 of the Wilsonville Code and to all applicable Federal Emergency Management Agency flood insurance standards.

8.560 Geotechnical Investigation

(1) Work on slopes exceeding 12 percent that is not exempt from the Erosion Control Permit requirements included herein shall require a written report from a civil engineer with geotechnical expertise. That report shall verify that the potential hazards of construction in the area have been considered and that adequate measures will be included in design and construction to assure that risks to life, property and the environment will be avoided or mitigated.

(2) Work on slopes greater than 12 percent shall utilize planning and designs that reduce the potential for erosion in the following ways:

(a) Limit the extent of disturbance of soils.

(b) Minimize removal of trees and other vegetative cover, meeting all, or exceeding, requirements of the City's Tree Preservation and Protection code (Section 4.600 of the Wilsonville Code).

Provide landscaping plans that include slope stabilization and re-vegetation.

8.564 Maintaining Water Quality

- (1) Construction within the banks of a stream shall be kept to a minimum.
 - (a) In-stream operations and schedule shall be in conformance with the Oregon Department of Fish and Wildlife's (ODF&W) in-water work windows and as approved in writing by the City's authorized representative.
 - (b) Comply with the regulatory requirements of ODF&W, Oregon Department of State Lands, US Fish and Wildlife Service, U.S. Army Corps of Engineers and any other state and federal agencies having jurisdiction.

(2) Construction materials and common construction site pollutants shall be controlled, including: demolition wastes, equipment fluids, concrete waste and slurry, sealants, additives, curatives and rinse water; treated wood, wood preservatives and resins; metal debris; solvents and degreasers; paints, paint thinners and paint rinse water; fertilizers, pesticides and herbicides; batteries, fluorescent lights, PCBs, asbestos, lead and contaminated soils. Pollutants such as fuels, lubricants, bitumens, raw sewage, and other harmful materials shall not be discharged into or near rivers, streams, impoundments, drainage systems or onto soil.

(3) All sediment-laden water from construction operations shall be routed through stilling basins, filtered or otherwise treated to reduce the sediment load.

(4) Refer to the City's Public Works Standards for design criteria for water quality facilities and their maintenance and operations.

8.566 Fish and Wildlife Habitat

(1) Construction shall be done in a manner to minimize the adverse effects on wildlife and fishery resources.

(2) Site Preparation

(a) Native materials shall be conserved for site restoration; for example native soils shall be re-used to fill soil-wrapped lifts.

(b) If possible, native materials shall be left where they are found and the disturbance area shall be minimized to the maximum extent practicable.

(c) Materials that are moved, damaged, or destroyed shall be replaced with the functional equivalent during site restoration.

(d) Any large wood, native vegetation, weed-free topsoil, and native channel material displaced by construction shall be stockpiled for use during site restoration.

(3) Emergency Measures

(a) In the event of a major unexpected event (spills, fire, flood, landslide, failure of construction measures or equipment) an assigned project representative will be on site or available by phone at all times.

(b) Work causing or affected by the event shall cease until the assigned representative provides clearance to proceed. The representative shall contact the appropriate permit representatives (e.g., City, ODF&W, DEQ, Oregon Department of State Lands) as appropriate.

(4) The requirements of local, state, and federal agencies charged with wildlife and fish protection shall be adhered to by the entire construction work force by implementing a plan to communicate Erosion Control Permit and other relevant requirements to all workers.

8.568 Existing Vegetation

(1) As far as is practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to vegetation intended to be protected. Trees shall not be used as anchors for stabilizing construction equipment.

(2) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be re-vegetated, and the vegetation established, as soon as practicable. Ivy shall not be used as a ground cover for erosion control purposes.

(3) Work in areas with one or more trees having a diameter of six or more inches at a height of 4 1/2 feet shall be subject to the applicable standards and requirements of Section 4.600 of the Wilsonville Code.

8.570 Contaminated Soils

(1) In the event the construction process reveals soils contaminated with hazardous materials or chemicals, the Contractor shall:

(a) Stop work immediately.

- (b) Immediately notify the City's authorized representative, the design engineer, the Oregon Department of Environmental Quality and an emergency response team of the situation upon the discovery of contaminated soils.
- (c) Ensure no contaminated material is hauled from the site.
- (d) Remove his/her work force from the immediate area of the contamination.
- (e) Leave all machinery and equipment on the site.
- (f) Secure the area from access by the public until such a time as a mitigation team has relieved them of that responsibility.

8.572 Underground Utilities (exposed areas) and Construction Access Roads

- (1) Utilities that are otherwise located underground, but which are visible where they cross swales, channels, or other intermittent low spots, shall be considered to be underground utilities, as the term is used in this ordinance.
- (2) Placement of underground utilities shall not result in dewatering of wetlands.
- (3) Ground disturbances created by stream crossings of underground utilities shall be seeded and or planted to appropriate vegetation.

8.574 Severability

- (1) If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

8.5736 Stormwater – Violation

Any person violating any of the terms of this Section shall upon a first conviction thereof, be subject to the violation fine provisions pursuant to City Code Chapter 1.012 of the Wilsonville Code and upon a subsequent conviction thereof, shall be subject to the Class C Misdemeanor fine provisions pursuant to City Code Chapter 1.011. In addition, upon a conviction, a person shall be liable for the costs of prosecution.

ENFORCEMENT

8.602 Administrative Enforcement Remedies

(1) Enforcement. In addition to the imposition of civil penalties, the City shall have the right to enforce this Chapter by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts. Any discharge that fails to comply with the requirements of these rules and regulations or provisions of its industrial wastewater discharge permit may be subject to enforcement actions as prescribed in Section 8.602(2) through Section 8.602(9) below.

(a) The City is hereby authorized to adopt, by ordinance or resolution, an Enforcement Response Plan, with procedures and schedules of fines, to implement the provisions of this Section.

(b) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, sludge disposal, interference, work health and safety; violation of the City's NPDES discharge permit. Enforcement shall, generally, be escalated in nature.

(2) Notification of Violation. Whenever the City finds that any User has violated or is violating this Chapter, a wastewater permit or order issued hereunder, or any other pretreatment requirement, the Director of his agent may serve upon said user a written Notice of Violation. Within ten (10) days of receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of this Notice of Violation. Nothing in this section shall limit the authority of the City to take emergency action without first issuing a Notice of Violation.

(3) Consent Orders. The City may enter into Consent Orders, Assurance of Compliance, or other similar documents establishing an agreement with the any User responsible for the noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the document. Such documents shall have the same force and effect as administrative orders issued pursuant to Section 8.602(4) or 8.602(5) below and shall be judicially enforceable.

(4) Show Cause Hearing. The City may order any industrial user which causes or contributes to violation(s) of this Chapter, wastewater permits or orders issued hereunder, or any other pretreatment requirement to appear before the City and show cause why a proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the User. Whether or not the User appears as notified, immediate

enforcement action may be pursued following the hearing date. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(5) Compliance Orders. When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(6) Cease and Desist Orders. When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the City may issue an order to the User directing it to cease and desist all such violations and directing the User to:

(a) Immediately comply with all requirements:

(b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatening violation, including halting operations and/or terminating the discharge. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(7) Administrative Fines.

(a) When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may fine such User in an amount not to exceed five thousand dollars (\$5,000). Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation.

(b) Assessments may be added to the user's next scheduled sewer service charge and the City shall have such other collection remedies as may be available for other service charges and fees. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of twenty percent (20%) of the unpaid balance, and interest shall accrue thereafter at a rate of seven percent (7%) per month. A lien against the User's property shall be sought for unpaid charges, fines, and penalties.

(c) Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within ten (10) days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. the City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(d) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(8) Emergency Suspensions. The City may immediately suspend an user's discharge and the industrial user's wastewater discharge permit, after informal notice to the industrial user, whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent endangerment to the health and welfare of persons. The City may also immediately suspend an user's discharge and the industrial user's wastewater discharge permit, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(a) Any User notified of a suspension of its discharge activity or wastewater permit shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate severance of the sewer connection to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City may allow the User to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings set forth in Section 8.602(9) are initiated against the user. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

(b) Any user which is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Director prior to the date of any show cause or termination hearing under Section 8.602(4) or 8.602(9).

(9) Termination of Permit. Any User who violates the following conditions is subject to discharge termination:

(a) Violation of discharge permit conditions;

(b) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(c) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;

(d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling;

(e) Violation of the pretreatment standards in Section 8.302 of this Chapter.

Such Users will be notified of proposed termination of its discharge and be offered an opportunity to show cause under Section 8.602(4) above why the proposed action should not be taken.

Exercise of this option by the City shall not be a bar to, or establish a prerequisite for, taking any other action against the User.

(10) Appeals. Any enforcement action by the City may be appealed to the City Council by filing a petition for reconsideration. The petition must show cause why an enforcement action should not be taken.

(a) Enforcement action appeals must be filed with the City Recorder within ten (10) working days of receipt of the enforcement action.

(b) The petition for appeal shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the enforcement response and the requirements of the pretreatment program.

(c) Upon appeal, the City Council shall first determine whether the appeal shall be heard on the record only, or upon an evidentiary hearing *de novo*. Where an appellant has been afforded an opportunity of an evidentiary hearing by the City, then appeal shall be limited to a review of the record and a hearing for receipt of arguments regarding the record. Where an appellant has not been afforded an evidentiary hearing, or upon finding that under prejudice should otherwise result, the City Council shall conduct an evidentiary hearing *de novo*.

(d) Unless otherwise provided by the City Council, an evidentiary hearing *de novo* on appeal shall require a record be kept of the following:

- 1) The record, if any, of the matter before the City.
- 2) A factual report prepared and presented by the City.
- 3) All exhibits, materials and memoranda submitted by any party and received or considered in reaching the decision under review.
- 4) A record of testimonial evidence, if any.

(e) Upon review, the City Council may by order affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review. When the Council modifies or renders a decision that reverses a decision regarding and enforcement action, the Council, in its order, shall set forth its finding and state its reasons for taking the action.

8.604 Judicial Enforcement Remedies

(1) Injunctive Relief. Whenever the City finds that a user has violated or continues to violate the provisions of this Chapter, permits or orders issued hereunder, or any other pretreatment requirements, the City through the City's attorney, may petition the Circuit Court of Clackamas County for issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for taking any other action against the User.

(2) Civil Penalties. A User which has violated or continues to violate the provisions of this Chapter, a wastewater permit, or any order issued hereunder, or any other Pretreatment Standard or Requirement may be liable to the City for a maximum civil penalty of five thousand dollars (\$5,000) per violation per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each business day during the period of this violation.

(a) The City may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(b) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm, caused by the violation, the magnitude and duration, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the user, and any other factors as the justice requires.

(c) Filing a suit for civil penalties shall not be a bar to, or a prerequisite for, taking any other action against the user.

(3) Criminal Prosecution.

(b) Any User who willfully or negligently violates any provisions of this Chapter, any orders or permits issue hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 per violation per day or imprisonment for not more than one year or both.

(b) Any User who knowingly makes any false statement, representations, or certifications in any application, record, report, plan or other documentation filed or required to be maintained pursuant to this Chapter, or wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be punished by a fine of not more than \$5,000 per violation per day or imprisonment for not more than one year or both.

(c) Any User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least \$5,000 per violation, per day, or be subject to imprisonment for not more than one year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(d) In the event of a second conviction, the user shall be punished by a fine not to exceed \$6,000 per violation per day or imprisonment for not more than three (3) years or both.

(4) Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may take other action against any User when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant User.

8.606 Supplemental Enforcement Action

(1) Performance Bonds. The City may decline to reissue a permit to any User who has failed to comply with the provisions of this Chapter, a previous wastewater discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve a consistent compliance.

(2) Liability Insurance. The City may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Chapter, a previous wastewater discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurance sufficient to restore or repair damage to the POTW caused by its discharge.

(4) Payment of Outstanding Fees and Penalties. The City may decline to issue or reissue a wastewater discharge permit to any User who has failed to pay any outstanding fees, fines or penalties incurred as a result of any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder.

(5) Water Supply Severance. Whenever a User has violated or continues to violate provisions of this Chapter, orders, or permits issued hereunder, water services to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(6) Public Nuisance. Any violation of the prohibitions of effluent limitations of this Chapter, permits, or orders issued hereunder is hereby declared by a public nuisance and shall be corrected or abated as directed by the City. Any person(s) creating a public nuisance shall be subject to the provisions of Chapter 7 of the Wilsonville City Codes governing such nuisance, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

(7) Informant Rewards. The City may pay up to five hundred dollars (\$500) for information leading to the discovery of noncompliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the industrial user, the Director is authorized to disperse up to ten percent (10%) of the collected fine or penalty to the informant. However, a single reward payment may not exceed ten thousand dollars (\$10,000).

(8) Contractor Listing. Users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contract for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by an industrial user found to be in significant violation with pretreatment standards may be terminated at the discretion of the City.

BUSINESS RECYCLING REQUIREMENTS

8.700. Definitions.

For the purposes of this Chapter, the following terms shall mean:

(1). Business. Any person or persons, or any entity, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational or other activity that is non-residential in nature, including public bodies. The terms shall not apply to businesses whose primary office is located in a residence, conducted as a home occupation. A residence is the place where a person lives.

(2). Source separate. To separate recyclable material from other solid waste.

8.710. Purpose.

The purpose of sections 8.700 through 8.750 is to comply with Business Recycling Requirements set forth in Metro Code chapter 5.10. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals, conserving natural resources and reducing greenhouse gas emissions.

8.720. Business Recycling Requirements.

1. Businesses shall source separate from other solid waste all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling.
2. Businesses shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.
3. Businesses shall post accurate signs where recyclable materials are collected, stored or both that identify the materials that the business must source separate for reuse or recycling and that provide recycling instructions.
4. Persons and entities that own, manage or operate premises with Business tenants, and that provide garbage collection service to those Business tenants, shall provide recycling collection systems adequate to enable the Business tenants to comply with the requirement of this section.

8.730. Exemption from Business Recycling Requirements.

A business may seek exemption from the business recycling requirement by providing access to a recycling specialist for a site visit and establishing that it cannot comply with the business recycling requirement for reasons that include, without limitation, space constraints and extenuating circumstances.

8.740. Compliance with Business Recycling Requirements.

A business or business recycling service customer that does not, in the determination of the City or the City's agent, comply with the business recycling requirement may receive a written notice of noncompliance. The notice of noncompliance shall describe the

violation, provide the business or business recycling service customer an opportunity to cure the violation within the time specified in the notice and offer assistance with compliance.

A business or business recycling service customer that does not, in the determination of the City or the City's agent, cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the business or business recycling service customer that it may be subject to a fine.

8.750 Violations.

A business or business recycling service customer that does not cure a violation within the time specified in the citation may be subject to a fine provision pursuant to City Code Chapter 1.012, of up to \$250.00 for the first violation and up to \$500.00 for subsequent violations in a calendar year.

CITY OF WILSONVILLE, OREGON

Industrial Pretreatment Program Enforcement Response Plan

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SECTION I. INTRODUCTION

The General pretreatment Regulations, 40 CFR 403.8(f)(1)(vi)(A) require POTW's with approved pretreatment programs to obtain remedies for noncompliance by any Industrial User. Specifically, 40 CFR 403.8(f)(5) requires the POTW to develop and implement an enforcement response plan.

EPA states that a violation occurs when any of the following conditions apply:

- Any requirement of the City's rules and regulations has not been met.
- A written request is not met within the specified time.
- A condition of a permit issued under the authority of rules and regulations is not met within the specified time.
- Effluent limitations are exceeded, regardless of intent or accident.
- False information has been provided by the discharge.

Each day a violation occurs is considered a separate violation. Each parameter that is in violation is considered to be a separate violation.

Actions that can be taken by the City, in response to violations, are described in this Enforcement Response Plan. .

This Enforcement Response Plan is intended to provide guidance to the City Staff for the uniform and consistent enforcement of the City Sewer Use Ordinance to all Users of the system. The Enforcement Response Plan should be considered a guide for making decisions on the appropriate actions to be taken to return the User to full compliance in the shortest possible time while not being excessive. For additional information see the City of Wilsonville Code, Chapter 8.

SECTION II. ENFORCEMENT REMEDIES

A. Preliminary Enforcement Contacts

It is of mutual interest to the City and the IU to resolve compliance problems with a minimum of formal coercion. As an aid to the communication process surrounding a formal enforcement action, the City will use the following informal responses:

1. Phone Calls

A phone call maybe the initial informal action taken by the City for missed deadlines and other minor incidents of noncompliance as detected by sampling, inspection and/or as

soon as a compliance deadline is missed or noncompliance is detected. The City is not required to take this action prior to taking other enforcement options.

A written record of the phone conversation is kept and will contain the following information:

- name of company (IU);
- wastewater discharge permit number;
- name and title of person contacted;
- date and time; nature of violation;
- items discussed;
- results of conversation;
- initials or signature of City personnel initiating the phone call.

2. Informal Compliance Meeting

An informal compliance meeting may be held to discuss violations which have recurred, violations which remain uncorrected, or violations of a magnitude which warrant more communication between the City and the Industry. The compliance meeting is held specifically to include an authorized representative of the IU (e.g., vice president, general partner, or their duly authorized representative to ensure that he/she is aware that the industry is in noncompliance.

If possible, the compliance meeting should be held before significant noncompliance (SNC) is reached by the industrial user. The industrial user should already be aware of the criteria for SNC, and the compliance meeting will reinforce that the result of SNC includes enforcement measures mandated by federal regulations. The industry may in turn communicate any progress or measures it has taken to regain compliance.

B. Administrative Enforcement Remedies

Administrative Enforcement Remedies are actions that may be initiated at the City Staff level and are intended to be used as an escalation of enforcement. These enforcement actions are considered “formal” and are to be in a written format.

1. Notice of Violation

The Notice of Violation (NOV) is an appropriate initial response to any violations and may often be the first response. An informal enforcement action is not required prior to issuing a Notice of Violation. . The purpose of a NOV is to notify the industrial user of the detected violation. It may be the only response necessary in cases of infrequent and generally minor violations. As a general rule, the NOV will be issued not later than 5 business days after discovery of the violation. .

The NOV may be issued by the Pretreatment Coordinator.

The NOV will require the IU to submit a written explanation of the violation and a plan for its satisfactory correction within 10 days of receipt of the NOV. If the user does not return to compliance or submit a plan of correction, the City will escalate to more stringent enforcement responses.

2. Administrative Order

An Administrative Orders (AO) are enforcement actions requiring the IU to take a specific action within a specific time period, and may require the IU to seek outside assistance or to modify their production process to eliminate continued non-compliance. An Administrative Order is considered an escalation of the enforcement beyond an informal enforcement action and a Notice of Violation. The City is not required to take informal or less severe enforcement actions prior to issuing an Administrative Order. It is recommended that in most cases a Notice of Violation be issued prior to issuing an Administrative Order to assure the IU management are aware of the problem before ordering an action that may impact the productivity of the IU. The terms of an AO may or may not be negotiated with IUs.

a. Cease and Desist Order

A Cease and Desist Order directs a user in significant noncompliance (SNC) to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. A Cease and Desist Order should be used in situations where the discharge could cause interference of a pass through, or otherwise create an emergency situation. The Order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the Cease and Desist Order may be given initially by telephone, with follow-up (within 5 days) by formal written notice.

b. Consent Order

The Consent Order combines the force of an AO with the flexibility of a negotiated settlement. The Consent Order is an agreement between the City and the IU normally containing three elements:

- compliance schedules;
- stipulated fines or remedial actions; and
- signatures of the City and industry representatives.

Consent Orders are intended to provide a scheduled plan of action to be taken by the IU (sometimes actions to be taken by the City) to return to compliance. The compliance schedule should identify all significant actions in a step wise order and when each step should be completed. Routine written reports should be required of the IU providing written documentation of the status of the Consent Order at the time of the report. Typically Consent Orders should not exceed six months in overall time, and not specific step to exceed a 90 day period. In some cases the completion of one consent order leads to the issuance of a second or third

consent order dependent on the outcome of the previous consent order. Consent orders are effective providing the IU discharge is not contributing to pass through or interference of the POTW. The City may establish interim permit limits or special discharge requirements while a Consent Order runs its course.

No informal or less severe enforcement action is required to be taken prior to issue of a Consent Order. Before issuing a Consent Order the City should consider the impact the IU's discharge is having on the POTW (pass through or interference) and the evidence that is used to determine the need for the order. The milestone dates established for completion of steps within the Consent Order become enforceable at the same level of a discharge limit of the permit or a requirement of the City ordinance.

3. Show Cause Order

An order to show cause directs the user to appear before the City, and explain it noncompliance, and who cause why more severe enforcement actions against the user should not go forward. The order to show cause is typically issued after information contacts, NOVs, Consent Orders or Compliance Orders have failed to resolve the noncompliance. However, the Show Case Order/hearing can also be used to investigate violations or previous orders.

The Show Cause Order will either be hand-delivered or mailed with return receipt required. The Order will indicate the nature of the violations and the proposed enforcement response. At the Show Cause meeting, the Public Works Director will present a factual report prepared as the basis for the proposed enforcement action. The IU will present exhibits, material and memoranda. A record of testimonial evidence will be kept by the City.

Within thirty (30) days following the Show Cause meeting, the PW Director will render a decision regarding an enforcement action to be taken, setting forth findings and stating reasons for taking the action. Affirmative defenses to discharge violations (WC, Section 8.318) will be taken into consideration of the Director's decision.

Within ten (10) working days of receiving notice of the enforcement action to be taken, the IU may appeal the Director's decision to the City Council, pursuant to WC, Section 8.602 (10).

4. Compliance Order

Compliance Orders are similar to Consent Orders, in that, specific actions are mandated and milestone dates are established for the completion of each mandatory action. The primary difference is that a Compliance Order is not negotiated with the IU. The City establishes the mandatory actions and milestone

dates without consideration of the IU with the primary focus on protection of the POTW. Compliance Orders may include the acquisition of professional assistance, engineering design, additional or replacement pretreatment equipment, development of best management practices, action plans, increased or special testing and/or self-monitoring requirements, and other activities that the City may deem necessary to returning the IU to full compliance. Compliance Orders may establish interim limits and requirements while the IU is operating under the compliance order. The compliance order should require routine reporting during the course of the compliance order.

No previous enforcement action is required prior to issuance of a compliance order

5. Administrative Fines

Administrative Fine are a monetary penalties assessed by the City's Public Works Director for violations of pretreatment standards and requirements, violations of the terms and conditions of the discharge permit and/or violations of compliance schedules. Administrative fines are punitive in nature and not related to a specific cost borne by the City. Instead, such fines are intended to recapture the full or partial economic benefit of noncompliance, and to deter future violations. The maximum amount of the fine is \$5,000 for each day that each violation continues.

Administrative Fines are recommended as an escalated enforcement response, particularly when NOV's or administrative orders have not prompted a return to compliance. Whether administrative fines are an appropriate responses to noncompliance also depend greatly on the circumstances surrounding the violation. The City will consider the factors as set forth in Section III of this plan when determining the amount of the fine.

6. Emergency Suspension Order

The Public Works Director may suspend an industrial user's discharge and the industrial user's discharge permit, without informal notice or previous enforcement action, in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent endangerment to the health or welfare of persons, or an endangerment to the environment. Any industrial user notified of an emergency suspension must immediately stop or eliminate its discharge to the POTW. In the event of the industrial user's failure to immediately comply voluntarily with the suspension order, the City may sever sewer connection prior to the date of any show cause or termination hearing. The industrial user must submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrences before discharge to the POTW can be restored.

7. Termination of Permit

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into the City's sewer system. Termination may be accomplished by physical

severance of the industry's connection to the collection system, by issuance of a suspension order which compels the user to terminate its discharge, or by court ruling. Termination of service is an appropriate response to industries which have not responded adequately to previous enforcement responses. Unlike civil and criminal proceedings, termination of service is an administrative response which can be implemented directly by the City. However, the decision to terminate service requires careful consideration of legal and procedural consequences.

Any industrial user who violates the Wilsonville Code of Ordinances, discharge permit or compliance orders is subject to discharge permit termination as an enforcement remedy. Non-compliant industrial users will be notified in writing of the proposed termination of their discharge permit and will be offered an opportunity to show cause why the action should not be taken. The Public Works Director is authorized to terminate an IU's discharge if it presents or may present an endangerment to the environment or if it threatens to interfere with the operation of the POTW

In contrast to the Emergency Suspension Order, the Notice of Termination of the Discharge Permit is to be used when significant changes in the industrial user's operations have occurred without authorization resulting in new pollutant contributions or volume of wastewater discharged. Furthermore, through the course of administering, monitoring and compliance activity, the City may acquire new information which was not available at the time the discharge permit was issued. Until corrections have been made, and continuing discharge compliance can be assured, the City may terminate the IU's permitted right to discharge into the City's POTW.

C. Judicial Enforcement Remedies

There are four judicial enforcement remedies which are available to the City, as outlined in Wilsonville Codes – Injunctive Relief, Civil Penalties, Criminal Penalties, and Remedies Non-Exclusive.

1. Injunctive Relief

Injunctive relief is the formal process of petitioning the Circuit Court of Clackamas County for the issuance of either a temporary or permanent injunction which restrains or compels the specific performance of the discharge permit, order or other required imposed on the activities of the industrial user. Injunctive relief is carried out by the City Attorney in conjunction with the City manager, Public Works Director and the Mayor.

2. Civil Penalties

Civil litigation is the formal process of filing lawsuits against industrial users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. It is normally pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the City can assess administratively, or when the industrial user is considered to be recalcitrant and unwilling to cooperate. Civil litigation also includes enforcement measures which require involvement or

approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is pursued by the City Attorney and only initiated as authorized by the City Council.

3. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The purposes of criminal prosecution are to punish noncompliance established through court proceedings, and to deter future noncompliance. Criminal prosecutions are up to the discretion of the City Attorney and may be filed in municipal court.

4. Remedies Nonexclusive (§8.312)

The remedies provided for in the ordinance are not exclusive. The Public Works Director may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Director may take other action against any User when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant User.

D. Supplemental Enforcement Remedies

Supplemental or innovative enforcement remedies are used to complement the more traditional enforcement responses already described. Normally, supplemental responses are used in conjunction with more traditional approaches. The following are provided for in the City Code:

- § Performance Bonds
- § Liability Insurance
- § Payment of Outstanding Fees and Penalties
- § Water Supply Severance
- § Public Nuisance
- § Informant Rewards
- § Contractor Listing

SECTION III – ASSESSMENT OF ADMINISTRATIVE FINES

A. Base-Penalty Matrix

The following matrix provides a sample of suggested base-penalty (BP) for administrative fines based on the magnitude of the violations. The City should keep in mind that the following suggested fines are not mandatory and should be applied based on the various factors discussed in this section.

Class of Violation	Major	Moderate	Minor
Class I	\$5,000	\$2,500	\$1,000
Class II	\$2,000	\$1,000	\$500
Class III	\$500	\$250	\$100

B. Class of Violations

Class I:

- * Un-permitted discharge or failure to halt discharge which cause harm to the POTW and/or the environment.
- * Failure to comply with notification requirements of a spill or slug load or upset condition.
- * Violation of an Administrative Order or compliance schedule.
- * Failure to provide access to premises or records.
- * Any violation related to water quality which causes a major harm or poses a major risk of harm to public health or the environment.
- * Significant Noncompliance (40 CFR 403.8(f)(2)(vii)(A-H).
- * Process waste stream dilution as a substitute for pretreatment.

Class II:

- ** Operation of a pretreatment facility without first obtaining a Discharge Permit. (No harm to POTW or the environment).
- ** Any violation related to water quality which is not otherwise classified.
- ** Recurring violations of local discharge permit limits or Federal Standard.

Class III

- *** Un-permitted discharge which causes no harm to POTW.
- *** Failure to operate and maintain a pretreatment facility.
- *** Monitoring, record keeping, and reporting violations.
- *** First-time violation of a local permit limit or Federal Standard regulating the discharge of pollutants.

C. Magnitude of Violations

Major:

- pH value less than 5.0 or more than 11.0,.
- More than 2.0 times the maximum allowable limit established for regulated pollutants, other than pH.
- Anything directly attributable to an upset condition or damage of the POTW.
- Recurring failure to meet the terms of a compliance order or recurring failure to correct a known violation.
- Missed compliance milestone or report submittal deadline by more than 30 days without good cause.
- Any other violation meeting the definition of significant noncompliance (See Sections II and III, as well as the Enforcement Response Matrix).

Moderate:

- From 1.2 to 2.0 times the maximum allowable limit established for regulated pollutants, other than pH.
- Third Notice of Violations of a Discharge Permit condition or compliance order in a 12 month period.

Minor:

- pH value of 5.0 to 5.5 and 10.0 to 11.0 to 1.2 times the maximum allowable limit for regulated pollutants, other than pH.
- Second Notice of Violation for the same Discharge Permit condition or compliance order in a 12 month period.
- Missed compliance milestone or report submittal deadline without good cause by up to 30 days.
- Violations detected during site visits which do not results in harm to the POTW or the environment.

D. Maximum/Minimum Fines

No administrative fine, civil or criminal penalty pursuant to this matrix shall be less than \$100. The maximum fine/penalty may not exceed \$5,000 per each day per violation.

E. Assessment of Fines/Penalties

1. Assessment Protocol

When determining the amount of an administrative fine or civil penalty to be assessed for any violation, the Public Works Director shall apply the following procedures:

- Determine the class and the magnitude of each violation.
- Choose the appropriate base penalty (BP) from the BP Matrix in paragraph A of this section.
- Starting with the base-penalty (BP), determine the total amount of penalty through application of the formula:

$$\mathbf{BP + [(0.1 \times BP) (P+H+O+R+C)] + EB}$$

Where:

BP = Base-Penalty

P = prior significant action taken against the IU. (Significant actions refers to any violation established either with or without admission by payment of a penalty.)

H = compliance history

O = violation repetitive or continuous

R = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act

C = Cooperation and effort put forth to correct the violation

EB = Approximated dollar sum of the economic benefit that the IU gained through noncompliance.

2. Values for (P) shall be as follows:

- (i) 0 if no prior significant actions or there is insufficient information on which to base a finding.
- (ii) 1 if the prior significant action is one Class Two or two Class Threes;
- (iii) 2 if the prior significant action(s) is one Class One or equivalent;
- (iv) 3 if the prior significant actions are two Class One or equivalents;
- (v) 4 if the prior significant actions are three Class Ones or equivalents;
- (vi) 5 if the prior significant actions are four Class Ones or equivalents;
- (vii) 6 if the prior significant actions are five Class Ones or equivalents;
- (viii) 7 if the prior significant actions are six Class Ones or equivalents;
- (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
- (x) 9 if the prior significant actions are eight Class Ones or equivalents;
- (xi) 10 if the prior significant actions are nine Class Ones or equivalents, of it any of the prior significant actions were issued for any violation of WC, Chapter 8.
- (xii) In determining the appropriate value for prior significant actions as listed above, the Director shall reduce the appropriate factor by:
 - (1) A value of two (2) if all prior significant actions are greater than three years but less than five years old;
 - (2) A value of four (4) if all the prior significant actions are greater than five years old;
 - (3) In making the above restrictions, no finding shall be less than 0.
- (xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.

3. Values for (H) shall be as follows:

(H) = Past history of the IU to take steps to correct violations cited in prior significant actions. In no case shall the combination of (P) and (H) be a value of less than zero.

- (i) -2 if IU took all feasible steps to correct each violation contained in any prior significant action;

- (ii) 0 if there is not prior history or if there is insufficient information on which to base a finding:

4. Values for (O) shall be as follows:

Where (O) = whether the violation was repeated or continuous

- (i) 0 if the violation existed for one day or less and did not recur on the same day;
- (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.

5. Values for (R) shall be as follows:

Where: (R) = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act.

- (i) 0 if an unavoidable accident, or if there is insufficient information or make a finding.
- (ii) 2 if negligent
- (iii) 6 if intentional; or
- (iv) 10 if flagrant

6. Values for (C) shall be as follows:

Where: (C) is the Cooperation and effort put forth by the IU to correct the violation.

- (i) 2 if IU was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
- (ii) 0 if there is insufficient information to make a finding, or if the violation of the effects of the violation could not be corrected.
- (iii) 2 if IU was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

7. Values for (EB) shall be as follows:

Where: (EB) = Approximated dollar sum of the economic benefit that the IU gained through noncompliance. The penalty may be increased by the value assigned to (EB), provided that the sum penalty does not exceed the maximum allowed. In order to ensure that no IU may be able to pollute as a cost of doing business, the PW Director is empowered to take more than one enforcement action against any noncompliance IU (WC, Section 8.140(2)).

- (i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;
- (ii) The PW Director need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis;

SECTION IV. NON COMPLIANCE DEFINED

A. Noncompliance

Noncompliance is any violation of one or more of the, Wilsonville Code, Chapter 8, any of the conditions or limits specified in the IU's Wastewater Discharge Permit or any compliance order issued by the City. Enforcement action must be initiated for the following instances of noncompliance:

1. Industry failure to submit a permit application form;
2. Industry failure to properly conduct self-monitoring;
3. Industry failure to submit appropriate reports;
4. Industry failure to comply with appropriate pretreatment standards by the compliance deadline date;
5. Industry failure to comply with pretreatment limits as determined from review of self-monitoring reports or City sampling;
6. Industry falsification of information;
7. Sewer use violation of the municipal code

B. Significant Noncompliance:

Significant Noncompliance shall be applicable to all Significant users or any other Industrial User that violates paragraphs (3), (4) or (8) of this Section and shall mean:

1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameters during a six month period exceeded (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits. .
2. Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent (33%) of more of wastewater measurements taken for each pollutant parameter taken during a six-month period equal or exceeded by the product of a numeric Pretreatment Standard or Requirement, including Instantaneous Limits multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
3. Any other violation of a Pretreatment Standard or Requirement (daily maximum or longer- term average, Instantaneous Limits or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel of the general public);

4. Any discharge of pollutant that has caused imminent endangerment to the public or to the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge.

5. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.

6. Failure to provide within forty five (45) days after the due date, required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, , periodic self-monitoring reports, and reports on compliance with compliance schedules.

7. Failure to accurately report noncompliance; or

8. Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the pretreatment program.

SECTION V. RANGE OF ENFORCEMENT REPOSSES

When the City is presented with the need for enforcement response, it will select the most appropriate response to the violation. The City will consider the following criteria when determining a proper response:

- § . Magnitude of violation;
- § Duration of the violation;
- § . Effect of the violation on the receiving water;
- § . Effect of the violation on the POTW;
- § . Compliance history of the industrial user; and
- § . Good faith of the industrial user.

These six criteria are discussed in detail below:

1. Magnitude of the Violation

Generally, an isolated instance on noncompliance can be met with an informal response and a Notice of Violation or Consent Order. However, certain violations or patterns of violations are significant and must be identified as such. Significant Noncompliance (SNC) may be on an individual or long-term basis of occurrence. Categorization of an IU as being in SNC provides the City with priorities for enforcement action and provides a means for reporting on the IU performance history. SNC is a violation which meets one or more of the criteria set forth in Section IV B.

2. Duration of Violation

Violations, regardless of severity, which continue over long periods of time will subject the industrial user to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 45 days overdue is considered SNC, while a report which is two days late would not be deemed significant.

The City's response to these situations must prevent extended periods of noncompliance from recurring. The City may issue an administrative order for chronic violations. If the industrial user fails to comply with the administrative order, the City will assess administrative penalties or initiate judicial action. If the prolonged violation results in serious harm to the POTW, the City will also consider terminating services or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

3. Effect on the Receiving Water

One of the primary objectives of the national pretreatment program is to prevent pollutants from "passing through" the POTW and entering the receiving stream. Consequently any violation which results in environmental harm will be met with a SNC categorization and corresponding enforcement action. Environmental harm will be presumed whenever an industry discharges a pollutant into the sewerage system which:

- a. Passes through the POTW and causes a violation of the POTW's NPDES permit (including water quality standards); or
- b. Has a toxic effect on the receiving waters (i.e. fish kill).

The enforcement response should ensure the recovery from the noncompliance user of any NPDES fines and penalties paid by the City to any party whether governmental or otherwise. If a user's discharge causes repeated harmful effects, the City will seriously consider terminating service to the user.

4. Effect on the POTW

Some of the violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, process, operations, or cause sludge contamination resulting in increased disposal costs. These violations will be categorized as SNC. For example, when the industrial user's discharge upsets the treatment plant, damages the collection system through pipe corrosion, causes an obstruction or explosion, or causes additional expenses (e.g. to trace a spill back to its source), the POTW's response will include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

5. Compliance History of the User

A pattern of recurring violations (even if different program requirements) may indicate whether that the user's treatment system is inadequate or that the user has taken a casual approach to operating and maintaining its treatment system. Accordingly, users exhibiting recurring compliance problems will be categorized as SNC. Compliance history is an important factor for deciding which of the two or three designated appropriate remedies to apply to a

particular violator. For example, if the violator has a good compliance history, the City may decide to use the less severe option.

6. Good Faith of the User

The user's "good faith" in correcting its noncompliance is a factor in determining which enforcement response to invoke. Good faith is defined as the user's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a user's demonstrated willingness to comply will predispose the City to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. For example, if the City's POTW experiences a treatment upset, the City will recover its costs regardless of prior good faith. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner (although compliance with previous enforcement orders is not necessarily good faith).

SECTION VI. ENFORCEMENT PROCEDURES

The City must document procedures to evaluate industry self-monitoring data, reports and notices to accurately determine the compliance status of each significant user. These procedures must identify all violations, including non-discharge or reporting violations.

This Enforcement Response Plan designates responsibilities for this evaluation task. The task is assigned to the Pretreatment Coordinator since he/ she is familiar with the IU's and the City's pretreatment program rules and regulations. The Pretreatment Coordinator is responsible to identify the noncompliance and alert the Public Works Director (PWD) of the possible need for enforcement action.

The City will examine all monitoring data and reports within five (5) days of receipt. In order to review reports, the Pretreatment Coordinator will apply the following procedures:

- The Pretreatment Coordinator has established schedules in the Industrial Wastewater Discharge Permits to designate when self-monitoring reports are due. Each self-monitoring report will be checked to see that it is submitted by its due date, and is appropriately signed and certified. Likewise, the Pretreatment Coordinator will check notifications and report requirements.
- All analytical data will be screened by comparing it to categorical or local limits or to any additional discharge standards which may apply.
- All violations will be identified and a record made of the response. At a minimum, this will be accomplished by circling the violation, using a red ink marker.
- The Pretreatment Coordinator, Responsible for screening data, must alert the PWD to the noncompliance. This allows the City to determine its enforcement response in a timely manner.

Industrial waste discharges violations are usually detected by the following six ways:

- (1) An industrial user reports a violation.
- (2) The City's collection system monitoring and field surveillance detects a possible violation.
- (3) The treatment plant process is upset.
- (4) An unauthorized waste disposal procedure is identified during a facility inspection.
- (5) Investigation of a Citizen Concern Action Report.
- (6) Emergency crews (i.e. police, fire, rescue) report a hazardous material incident.

Industrial source investigations will be initiated for each of the examples presented above, and ensuing enforcement actions will be of an escalating nature (see Enforcement Response Matrix). Enforcement will begin with administration remedies (e.g. Notice of Violation, Consent Orders, Compliance Orders). If necessary, civil/criminal penalties will be sought and/or emergency suspension of sewer service will be ordered. Appropriate fines and penalties (civil/criminal) will be sought, as provided in WC Chapter 8.

The enforcement plan uses a three-level approach to enforcement action toward any noncompliance event.

LEVEL I: Responses represent the enforcement efforts utilized by the City to bring the IU into compliance before a state of significant noncompliance (SNC) is reached. The following enforcement actions are utilized at this level of response.

<u>Response</u>	<u>City Personnel</u>
1. (Informal) Phone Call	Pretreatment Coordinator
2. (Informal) Compliance Meeting	Pretreatment Coordinator
3. Notice of Violation (WC, Section 8.602(2))	Pretreatment Coordinator
4. Consent Order (WC, Section 8.602(3))	Pretreatment Coordinator

LEVEL II: Responses are taken when an IU has reached significant noncompliance. Level II enforcement action must include the issuance of an Administrative Order, as described below:

<u>Response</u>	<u>City Personnel</u>
1. Compliance Order (WC, Section 8.602(5))	Public Works Director
2. Cease and Desist Order (WC, Section 8.602 (6))	Public Works Director City Attorney

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- | | |
|--|--|
| 3. Emergency Suspension
(WC, Section 8.602 (8)) | Public Works Director
City Attorney |
| 4. Termination of Permit
(WC, Section 8.602(9)) | Public Works Director
City Attorney |

When an IU is in SNC, the Pretreatment Coordinator will do the following:

1. Report such information to DEQ as a component of the City's annual pretreatment program report.
2. Include the IU in the annual published list of industries which were significantly violating applicable pretreatment standards and requirements during the previous 12 months. The procedures the ESM will follow for compiling the list of IU's, includes:
 - a. Prepare a compliance history from the City's pretreatment records for each SIU.
 - b. Review the history of each SIU for either a pattern of noncompliance, or if the SIU has been or continues to be in SNC.
 - c. To the extent that an SIU meets the criteria in (b), above, the SIU will be placed on the list for publication in the largest daily newspaper within the City of Wilsonville.
 - d. The published list of IU's in SNC will include the following information:
 - I. Duration of violation.
 - ii. Parameters and/or reporting requirements violated.
 - iii. Compliance actions taken by the City.
 - iv. Whether or not the IU is currently in compliance or on a compliance schedule.

LEVEL III: This level of enforcement is reserved for the extreme occasion when the IU is in SNC and does not respond to an Administrative Order, does not adhere to compliance schedules, and where fines have not been effective in bringing the IU into compliance with pretreatment regulations. Level III enforcement may also be used for willful discharge of wastewater in amounts which cause pass through or interference, and cases of falsification. The timeframe for initiating Level III enforcement actions will range from immediate (e.g. reasonable potential to cause harm to the public, the POTW, or the environment, or a court ordered injunction for gaining access to an IU's facility) to not more than sixty (60) days. This level of enforcement requires the consultation of the City Attorney to determine the appropriateness and legal basis for the action to be implemented.

- | <u>Response</u> | <u>City Personnel</u> |
|--|-------------------------------|
| 1. Injunctive Relief
(WC, Section 8.604(1)) | City Attorney
City Council |
| 2. Civil Penalties | City Attorney |

- | | |
|-----------------------------|---------------------------------------|
| (WC, Section 8.604(2)) | City Council |
| 3. Criminal Prosecution | City Attorney |
| (WC, Section 8.604(3)) | City Council |
| 4. Supplemental Enforcement | Public Works Director, City Attorney, |
| (WC, Section 8.606) | City Council |

SECTION VII. TIME FRAMES FOR ENFORCEMENT ACTION AND FOLLOW-UP

The City will provide timely response to violations. In Section I and Section IV it has been established that the Pretreatment Coordinator will review industrial user reports within five (5) days of receipt. Similarly, violations observed in the field or upon receipt of compliance information will be responded to within five (5) days. Complex or larger violations may require a longer response time, and communications will be made with the industrial user (IU) regarding the time of the City's response. All formal enforcement notices will either be hand-delivered or mailed with return receipt required.

After its initial enforcement response, the City will closely track IU's progress toward compliance. This may be done by inspection, as well as timely receipt of required progress reports. The frequency of user self-monitoring may be increased. When follow-up activities indicate that the violation persists or that satisfactory progress is not being made, the City will escalate its enforcement response, using the steps of the enforcement matrix as a guide.

The Pretreatment Coordinator will establish a manual log to record the receipt of required reports. This log will contain 12 sections. Each section will be titled with the name of the month, January through December. The pages in each monthly section will list all of the industrial users who are required to report. Under each listed industry will be listed the type of report due and its due date. Following the due date will be a place to write the date the report is actually received. Next to each listed industry, also on the same line which identifies required reports and due dates, will be an area to note a summary of compliance status, including enforcement actions, calculations of administrative fines and/or SNC, and enforcement action timelines.

At the end of the month, the material in the report log will be transferred to a computer file created for each industrial user for ongoing storage and retrieval. The written records will be placed in a loose-leaf notebook developed to hold all pretreatment information pertinent to the particular industry.

In summary, the tracking of noncompliance, including SNC will be accomplished as follows:

1. Monitoring reports, inspection reports and compliance reports will be reviewed by the Pretreatment Coordinator within 5 days of receipt. Likewise, all pretreatment program violations will be identified and documented and the initial (Level 1) enforcement response (e.g. phone call

or compliance meeting **and** an NOV or Consent Order) will occur within 5 days of receipt of reports.

2. Violations classified by the Pretreatment Coordinator as SMC will be followed with an enforceable Level II order to be issued by the Public Works Director within 3 days of receipt or detection of noncompliance.

3. Assisted by the City Attorney, the Pretreatment Coordinator will respond to persistent or recurring violations with an escalated enforcement response (Level III) within 60 days after the initial enforcement action. Violations which threaten health, property or the environment will be treated as an emergency and an immediate enforcement response (e.g. Termination of Permit, Suspension Order, Injunctive Relief) will be initiated.

SECTION VIII. RESPONSIBILITIES OF PERSONNEL

A. POTW Supervisor

The wastewater treatment plant Supervisor is responsible for the overall operation and maintenance of the POTW, including employee safety, and protection of the treatment plant. The Supervisor is also responsible for compliance with the NPDES permit for wastewater discharge. The Supervisor has the authority to recommend to discontinue sewer service in emergency situations where there reasonably appears to present an imminent endangerment or substantial endangerment to the health or welfare of persons. The Supervisor will work under the direction of the Public Works Director.

B. Pretreatment Coordinator (PC)

The City will have a Pretreatment Coordinator who will be an individual thoroughly familiar with the program requirements and responsible for ensuring implementation of the City's pre-treatment program requirements. The Pretreatment Coordinator is also responsible for the administration and implementation of the pretreatment program. The Pretreatment Coordinator will screen monitoring data, do inspections, and detect noncompliance. The Pretreatment Coordinator will be the person typically working with industrial users. The Pretreatment Coordinator is responsible for recommending to the Public Works Director any enforcement action and publishing the annual list of significant noncompliance violators. The Pretreatment Coordinator will also review industrial user reports and make reports of violations. The Pretreatment Coordinator is also responsible to track all actions of enforcement, by establishing time lines and all necessary follow-up and make recommendations to the Public Works Director, City Attorney and City Council for enforcement action. The PC will work under direction of the Public Works Director.

C. Public Works Director (PWD)

As provided by WC, Section 8.006(58), the Public Works Director is the person designated to supervise and assume responsibility for the overall operations of the City's public works infrastructure, including the POTW, NPDES, permit compliance and the industrial

pretreatment program. The PWD is primarily involved in the escalation of enforcement responses and determining administrative fines. The Public Works Director works under the direction of the City Manager and supervises the Pretreatment Coordinator.

D. City Attorney

The City Attorney will be responsible for advising staff and City Council on pretreatment enforcement matters. The Attorney works under the direction of the City Council. The City Attorney will also be responsible for preparation and implementation of judicial proceedings.

E. City Council

The City Council for the City of Wilsonville will be responsible for authorizing any Level III enforcement action taken, except in an emergency. As defined by City Charter, the City Council will be ultimately responsible for effluent quality, sludge use and disposal, NPDES compliance, the issuance of administrative orders, fines and assessments, and any judicial action followed by the sewer use ordinance.

SECTION IX. ENFORCEMENT RESPONSE MATRIX

A. Definitions

AF	Administrative Fee
CA	City Attorney
CC	City Council of the City of Wilsonville
CDO	Cease and Desist Order. Unilateral order to require immediate IU compliance
CM	Compliance Meeting
CO-1	Consent Order. Voluntary compliance agreement, including specified timeframe
CO-2	Compliance Order. Unilateral order to require IU compliance within specified timeframe
ES	Emergency suspension of IU discharge and discharge permit
ESM	Environmental Services Manager
IU	Industrial User
Level III	When IU does not comply with CO-1 and CO-2, and AF has not been effective in bringing the IU into compliance, this level of enforcement requires the consultation of the CA to determine appropriate legal action which may include; injunctive relief, civil penalties, criminal prosecution
NOV	Notice of Violation
PC	Pretreatment Coordinator
PWD	Public Works Director
SNC	Significant Noncompliance
SCO	Show Cause Order requiring IU to appear and demonstrate why the City should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.
TP	Termination of Permit

B. Applying the Enforcement Matrix

The matrix specifies enforcement actions for each type (or pattern) of noncompliance. The Pretreatment Coordinator will select an appropriate response from the list of enforcement actions indicated by the matrix. There are a number of factors to consider when selecting a response from among these actions. Several of the factors are identical to those used in originally establishing the guide:

1. Good faith or the user.
2. Compliance history of the user.
3. Previous success of enforcement actions taken against the particular user.
4. Violation's effect on the receiving waters.
5. Violation's effect on the POTW.

Since the remedies designed in the matrix are all considered appropriate, the city staff and city council must weigh each of the factors outlined above before deciding whether to use a more or less stringent response. City personnel shall consistently follow the enforcement response matrix. To do otherwise sends a signal to industrial users and the public that the City is not acting in a predictable manner and may subject the City to charges of arbitrary enforcement decision making, thereby jeopardizing future enforcement. The enforcement response matrix is to be used as follows.

1. Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2.
2. Assess the appropriateness of the recommended response(s) in column 3. First offenders or users demonstrating good faith efforts may merit a more lenient response. Similarly, repeat offenders or those demonstrating negligence may require a more stringent response.
3. From column 3, apply the enforcement response to the industrial user. Specify correction action or other responses required of the industrial user, if any. Column 4 indicates personnel responsible for initiating each response.
4. Follow-up with escalated enforcement action if the industrial user's response is not received or the violation continues.

SECTION IX. ENFORCEMENT RESPONSE MATRIX

ENFORCEMENT RESPONSE MATRIX

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
I. Unauthorized Discharge (No Discharge Permit)				
A. Discharge without a Permit	IU unaware of requirement, no harm to POTW or Environment	I	Phone Call & NOV with Permit Application Form	PC
	IU unaware of requirement, Harm to POTW or Environment	II	CO-2 with AF	PWD
	Recurring Un-permitted Discharge	III	SCO	CA, CC
B. Discharge without a Permit Failure to Renew Existing Permit	IU did not submit permit renewal application within 90 days of permit expiration date	I	Phone Call & NOV with Permit Application Form	PC
	IU did not submit permit renewal application follow NOV and permit application, exceeded 45 days beyond submittal due date.	II	CO-2 with AF	PWD
	IU did not submit permit renewal application follow NOV and permit application, exceeded 60 days beyond submittal due date.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA, CC

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ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
II. Discharge Limit Violation				
A. Reported Limit Violation	Sample results exceed numerical permit limit but does not exceed Technical Review Criteria for severity.	I	Phone Call &/or NOV	PC
	Four (4) violations for same pollutant with three (3) consecutive months	II	CM and CO-1	PWD
	Sample results exceed numerical permit limit (chronic violation) and exceeds the Technical Review Criteria (TRC)	II	CO-2 and AF pending severity of violation with adverse impact to POTW	PC, PWD,
	Recurring Violations resulting in SNC (Significant Noncompliance)	II	CDO with AF	PWD CA,
	Discharge limit violation which causes POTW interference, pass-through or health hazard.	II	CDO with AF	PWD, CA,
	Any discharge causing endangerment to the public or the environment	III	ES and SCO	PWD, CA, CC
B. pH Limit Violations – Grab Sampling	Any excursion detected during a 24-hour period.	I	Phone call & NOV,	PC
	Four (4) violations within 3 consecutive months	I	CM & CO-1	PC
	pH violations resulting in Significant Noncompliance	II	CO with possible AF	PWD, CA,CM
C. pH Limit Violation – continuous	Excursion exceeding 60 min. in 24 hour period (level 1) except that per 40 CFR 403.5(b)(2) any discharge below 5.0 is a violation. Excursions above 11.0 is also a violation.	I	Phone & NOV. ** 4 excursions in one quarter: CM & C)-1	PC
	Excursions exceeding 7 hours and 26 min. during a calendar month> (Level I)	I	Phone call & NOV. **4 excursions in one quarter: CM & CO-1	PC
	Daily or monthly violations occurring	II	CO-2 with AF	PWD

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	during 66% or more of a 6 month period. (Level II)			
D. pH Limit Violation – resulting in harm to POTW or environment	pH violations resulting harm to POTW or environment are considered significant non compliance	II	If reported IU, CO-2 with possible AF. If not reported by IU, CDO with AF	PWD, CA

ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
II. Discharge Limit Violation (continued)				
E. Spill or Slug Discharge resulting in mass loading violations	Reported by IU: No damage to POTW, Isolated Occurrence.	I	Phone call & NOV.	PC
	Second occurrence within 6 month period.	I	CO-1	PC
	Reported by IU. Resulting in pass-through interference, or damage to POTW. Isolated occurrence.	II	CO-2 with possible AF	PWD
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA, CC
	Not Reported by IU. No damage to POTW	I	CM and CO-1	PC
	Second occurrence within 6 month period.	II	CO-1 with possible AF	PWD, CA, CM
	Not Reported by IU. Resulting in interference, pass-through or damage	II	CDO with AF	PWD, CA
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA, CC
III Monitoring and Reporting Violations				
A. Reporting Violations	Report is improperly signed or certified.	I	Phone call & NOV	PC
	Second occurrence within 6 month period	II	CM and CO-1	PC
	Scheduled reports late, 45 days or less, isolated incident	I	Phone call & NOV	PC
	Scheduled reports late more than 45 days.	II	CO-2 with AF	PWD
	Failure to Submit Reports; or reports are	II	CDO with possible AF	PWD, CA, PC

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	always late.			
	Incomplete Reports	I	Phone Call &/or NOV second incident CM and CO-1	
	Failure to Accurately Report noncompliance	II	CO-2 with AF	PWD, CA
	Scheduled reports late more than 60 days	III	SCO	PWD, CA, CC

ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
III Monitoring and Reporting Violations (continued)				
A. Reporting Violations (continued)	Report Falsification	III	Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Monitoring Violations	Failure to monitor all pollutants as specified by discharge permit	I	Phone Call &/or NOV	PC
	Second occurrence within 6 month period	II	CO-1 with a possible AF	PWD, PC
	Improper sampling with evidence of intent	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
	Failure to install monitoring equipment. Delay of 30 days or less, with good cause	I	Phone Call &/or CO-1	PC
	Failure to install monitoring equipment. Delay of more than 30 days.	II	CM and CO-1 with possible AF	PWD
	Pretreatment Equipment and Monitoring Equipment no maintained or out of service, evidence of neglect.	II	CO-2 with possible AF	PWD

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ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
III Monitoring and Reporting Violations (continued)				
C. Compliance Schedule in Discharge Permit	Milestone Date missed by 30 days or less	I	Phone Call &/or NOV	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (good cause of delay)	I	CM & CO-1	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (without good cause for delay).	II	CO-2 with possible AF	PWD
	Violation of Compliance Schedules issued to enforcement discharge permit compliance schedule.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
IV. Other Violations				
A. Waste Streams are Diluted in lieu of Pretreatment	Initial Violation	II	CDO with possible AF	PWD, CA
	Recurring Violations	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Failure to meet compliance date for starting construction or attaining final compliance.	No Harm to POTW or environment. Delay, with good cause, less than 90 days.	I	CM and CO-1	PC
	Delay exceeds 90 days	II	CO-2 with possible AF	PWD
C. Failure to Properly Operate and Maintain a Pretreatment Facility	Evidence of neglect of intent	II	CO-2 with possible AF	PWD

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ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
V. Violations Detected During Site Visit				
A. Entry Denied by the IU	Entry consent or copies of records denied.	II	Obtain warrant and return to IU for site visit. Follow-up with SCO for TP	PC PWD, CA, CC
B. Illegal Discharge	No Harm to POTW or environment	I	CM and CO-1	PC,
	Discharge causes harm or there is evidence of willful intent or neglect.	II	CDO with possible AF	PWD
	Recurring with evidence of willful intent or neglect.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
C. Improper Sampling	Unintentional sampling at incorrect location	I	Phone Call &/or NOV	PC
	ReOccurring unintentional sampling and incorrect location	II	Phone call &/or NOV	PC
	Reoccurring unintentional using incorrect techniques	II	Phone Call &/or NOV	PC
	Unintentionally using incorrect sample collection techniques	I	Phone Call &/or NOV	PC
D. Inadequate Record Keeping	Inspection finds records incomplete or missing	I	NOV possible CO-1	PC
	Recurrence of records incomplete or missing.	II	CO-2 with possible AF	PWD
E. Failure to report additional monitoring	Inspection finds additional monitoring data	I	NOV with possible CO-1	PC
	Recurrence of failure to report additional monitoring data.	II	CO-2 with possible AF	PWD

**SUMMARY OF
TIME FRAMES FOR RESPONSES**

1. Compliance Reports – reviewed within 5 days of receipt.
2. All violations will be identified and documented within 5 days of receiving compliance information.
3. **Level I** Enforcement Response (NOV, CO-1) – within 5 days of violation detection.
4. **Level II** Enforcement Response (CO-2, CDO, EX, TP, SCO) – within 30 days of violation detection.
5. **Level III** Enforcement Response (judicial and supplemental enforcement actions) time frame is subject to case-by-case legal review by the City Attorney, but in no case will the initiation of a Level III action exceed 60 days.
6. Recurring Violations – follow-up enforcement within 60 days.
7. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

**Entire Chapter 8 of the Code repealed and replaced by Ordinance No. 654 adopted on August 18, 2008.
Section 8.700-8.750 Added by Ordinance No. 664, adopted 6/1/09
Amended by Ordinance No. 689, adopted January 20, 2011 (correct scrivener errors)
Entire Chapter 8 Amended by Ordinance No. 753, adopted October 24, 2014**



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: July 6, 2015</p>	<p>Subject: Resolution No. 2543 IGA to Implement the Wilsonville-Metro Community Enhancement Program</p> <p>Staff Member: Mark Ottenad, Public/Government Affairs Director</p> <p>Department: Administration</p>
<p>Action Required</p>	<p>Advisory Board/Commission Recommendation</p>
<p><input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1st Reading Date: <input type="checkbox"/> Ordinance 2nd Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda</p>	<p><input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable</p> <p>Comments: The resolution and intergovernmental agreement implement the Wilsonville-Metro Community Enhancement Program, including creating the City Council-level committee to oversee program.</p>
<p>Staff Recommendations: Staff recommends Council adopt Resolution No. 2543.</p>	
<p>Recommended Language for Motion: I move to approve Resolution No. 2543.</p>	
<p>PROJECT / ISSUE RELATES TO:</p>	
<p><input checked="" type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input type="checkbox"/> Not Applicable</p>	

ISSUE BEFORE COUNCIL

An Intergovernmental Agreement between Metro and the City Of Wilsonville to establish the “Wilsonville-Metro Community Enhancement Program” (Metro Contract No. 933299), and create the Wilsonville-Metro Community Enhancement Committee to oversee the program.

EXECUTIVE SUMMARY

At the June 1 work session, Council directed staff to proceed with implementation of the proposed “Wilsonville-Metro Community Enhancement Program” through adoption of a resolution that executes the IGA and creates the new City Council-level Metro-Wilsonville Community Enhancement Committee to oversee implementation of the program.

BACKGROUND

Metro has undertaken a number of changes in 2014 to the region-wide Solid-Waste Community Enhancement Program that now makes Wilsonville eligible as to participate in the program beginning on July 1, 2015. Participation by the City in the Metro Solid-Waste Community Enhancement Program is accomplished through an intergovernmental agreement (IGA) with Metro that can require the formation of a committee to vet and select projects, a public-input process and participation by the community's district Metro Councilor, among other requirements.

The IGA between Metro and Wilsonville requires that a committee is formed to oversee the program and that the district Metro Councilor has an opportunity to serve on this committee. Due to the unique situation of having seated on the City's committee an elected Metro Councilor, staff recommended and Council agreed to creation of a new Council-level standing committee to be known as the "Metro-Wilsonville Community Enhancement Committee." Administration staff of the Office of the City Manager would provide support to the committee and coordination with Metro and City departments.

The Metro Solid Waste Community-Enhancement Program collects funds from solid-waste transfer facilities to be used to enhance and improve communities that host these facilities in accord with ORS 459.284. Funds collected under the community enhancement program are dedicated and used for enhancement host community of the facility from which the fees have been collected as determined by the committee or local government. These funds may be used for extensive community purposes that "rehabilitate and enhance the area within the City limits related to the transfer station."

Metro's program is applicable to eligible facilities located in Clackamas, Washington and Multnomah Counties within Metro's jurisdictional boundary. Community enhancement fees are collected on municipal garbage and food waste but generally are not collected on source-separated yard debris or construction/demolition waste.

Over the years, Metro has collected community enhancement fees at certain individual solid-waste facilities; *i.e.*, Metro Central Station in Portland, Metro South Station in Oregon City, Forest Grove Transfer Station, the now-closed St. Johns Landfill in Portland, and at the long-defunct Riedel Mass Composter in Portland. Metro's program since 1991 has collected \$0.50 per ton on solid waste delivered to the transfer stations. The funds are used to provide grants for local community improvement projects and programs responsive to funding guidelines and goals.

The program and funds have been administered to date in one of two ways: (1) by Metro through a Metro administered committee (*e.g.*, Metro Central Station Enhancement Committee, North Portland Enhancement Committee), or (2) directly by a local government through an intergovernmental agreement (IGA) between Metro and the host local government (*e.g.*, Oregon City, Forest Grove).

Metro Makes Changes to the Program

Metro contacted the City in 2014 to discuss proposed changes to the Solid Waste Community-Enhancement Program, and presented to the Council during work session in February 2014. As the host community of Republic Services' Willamette Resources Inc. (WRI) waste-transfer and recycling reclamation facility, Wilsonville would be eligible to participate in the program. At that time, the Council agreed with a staff recommendation to "direct local-government administration through an IGA with Metro" for implementation of the program Wilsonville.

In October 2014, the Metro Council held a public hearing on the proposed changes that Mayor Knapp and Oregon City testified in support of. The Metro Council, which noted that both ‘old’ and ‘new’ program participants supported the program modifications, approved changes to the Solid Waste Community-Enhancement Program that take effect on July 1, 2015. The changes include extending the program uniformly to all communities that host solid-waste transfer facilities and increasing the ‘tip fee’ to \$1.00 per ton, unchanged since 1991, that solid-waste haulers pay to use the transfer stations.

In January 2015, Metro forwarded a draft IGA and other documents for consideration by the City, and then provided an updated version of the IGA in April 2015. City staff brought to Council on June 1 a proposal for implementing the Metro Solid-Waste Community Enhancement Program in Wilsonville to create a new Council-level committee known as the Wilsonville-Metro Community Enhancement Committee to oversee the program locally.

The Wilsonville-Metro Community Enhancement Committee is to be composed of:

- 4 Citizen/Community members (Wilsonville residents)
- 2 City Council members
- 1 Metro Councilor (who has indicated a preference for ex-officio status)

COMMUNITY INVOLVEMENT PROCESS AND NEXT STEPS

Participation in the program requires a public-engagement process to advertise and solicit suggestions for community-enhancement projects, which are approved through an open public process. The City would anticipate using standard communications channels—including web posts, media releases, social-media, The Boones Ferry Messenger and newspaper—to advertise committee recruitment and opportunity for project nomination to the public.

FISCAL YEAR BUDGET IMPACTS

Recent estimates for the WRI transfer station in Wilsonville show that 70,000 tons of eligible putrescible solid waste and another 5,000 tons of food waste are processed over a 12-month period. (Note: WRI also accepts about 48,000 tons of dry waste (construction and demolition debris) but because this waste is processed for “recovery,” it is exempt from enhancement fees under state law.) At a rate of \$1.00 per ton, the City could anticipate an annual distribution of approximately \$70,000 per year of Metro Solid Waste Community-Enhancement Program funds.

Metro is currently reviewing the regional solid-waste program, and may authorize an expansion of the WRI facility to 100,000 tons or more of eligible solid waste, which could generate additional program funds.

FINANCIAL REVIEW / COMMENTS:

Reviewed by: SCole Date: 6/23/15

The 2015-16 Adopted Budget includes \$70,000 of both revenue and expenditure for this grant program, including administrative expenses.

LEGAL REVIEW / COMMENTS

Reviewed by: MEK Date: 6/22/15#

The City Council has the authority to authorize the City's participation with Metro in an intergovernmental agreement pertaining to the Solid Waste Community-Enhancement Program and to authorize a standing committee to implement requirements of the agreed upon IGA. The Resolution is approved as to form.

CITY MANAGER COMMENTS

The Wilsonville-Metro Community Enhancement Program will provide additional resources to advance community improvements.

ATTACHMENTS

- A.** Resolution No. 2543 A Resolution of the Wilsonville City Council Adopting the Intergovernmental Agreement Between Metro and the City Of Wilsonville to Establish the Wilsonville-Metro Community Enhancement Program and Creating the Wilsonville-Metro Community Enhancement Committee, July 6, 2015
- B.** Intergovernmental Agreement Between Metro and the City of Wilsonville to Establish the "Wilsonville-Metro Community Enhancement Program"

RESOLUTION NO. 2543

A RESOLUTION OF THE WILSONVILLE CITY COUNCIL ADOPTING THE INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND THE CITY OF WILSONVILLE TO ESTABLISH THE WILSONVILLE-METRO COMMUNITY ENHANCEMENT PROGRAM AND CREATING THE WILSONVILLE-METRO COMMUNITY ENHANCEMENT COMMITTEE

WHEREAS, the Metro Solid Waste Community-Enhancement Program collects funds from solid-waste transfer facilities located throughout the greater metro region to be used to enhance and improve communities that host these facilities in accord with ORS 459.284; and

WHEREAS, Community enhancement fees are collected on municipal garbage and food waste but generally are not collected on source-separated yard debris or construction/demolition waste; and

WHEREAS, funds collected under the community enhancement program are dedicated and used for enhancement host community of the facility from which the fees have been collected as determined by the committee or local government. These funds may be used for extensive community purposes that “rehabilitate and enhance the area within the City limits related to the transfer station”; and

WHEREAS, Metro’s program is applicable to eligible facilities located in Clackamas, Washington and Multnomah Counties within Metro’s jurisdictional boundary; however, in practice, only some facilities and host communities participated in the program and others did not participate; and

WHEREAS, Metro undertook a number of changes in 2014 to the region-wide Solid-Waste Community Enhancement Program that now makes Wilsonville eligible as to participate in the program beginning on July 1, 2015; and

WHEREAS, Metro contacted the City, as the host community of Republic Services’ Willamette Resources Inc. (WRI) waste-transfer and recycling reclamation facility, in 2014 to discuss Wilsonville’s eligibility to participate in the program; and

WHEREAS, participation by the City in the Metro Solid-Waste Community Enhancement Program is accomplished through an intergovernmental agreement (IGA) with

Metro that can require the formation of a committee to vet and select projects, a public-input process and participation by the community's district Metro Councilor, among other requirements; and

WHEREAS, in February 2014 the City Council agreed with a staff recommendation to "direct local-government administration through an IGA with Metro" for implementation of the program Wilsonville; and

WHEREAS, in January 2015, Metro forwarded a draft IGA and other documents for consideration by the City, and then provided an updated version of the IGA in April 2015; and

WHEREAS, Participation in the program requires a public-engagement process to advertise and solicit suggestions for community-enhancement projects, which are approved through an open public process.

WHEREAS, on June 1, 2015, the City Council reviewed and directed staff to advance a proposal for implementing via IGA the Metro Solid-Waste Community Enhancement Program in Wilsonville and creating a new Council-level committee known as the Wilsonville-Metro Community Enhancement Committee to oversee the program locally

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The Wilsonville City Council hereby adopts and authorizes the City Manager to execute the Intergovernmental Agreement Between Metro and the City of Wilsonville to Establish the "Wilsonville-Metro Community Enhancement Program." A copy of the Intergovernmental Agreement is marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein.
2. The Wilsonville City Council hereby creates the "Wilsonville-Metro Community Enhancement Committee" to oversee the Wilsonville-Metro Community Enhancement Program.
 - a. The Wilsonville-Metro Community Enhancement Committee ("Committee") is to be composed of:
 - i. Four (4) citizen/community members who are Wilsonville residents; and
 - ii. Two (2) City Council members; and

- iii. (One) 1 Metro Councilor.
- b. Appointment to the committee follows traditional City process where the Mayor appoints and Council confirms committee members from Wilsonville who serve at Council pleasure.
- c. The Committee is to be staffed by Administration personnel as designated by the City Manager.
- d. Process of project identification and selection for the Committee includes:
 - i. Advertise the Wilsonville-Metro Community Enhancement program to the community and solicit project ideas, such as creation of an online form, possibly with potential projects identified by the City, to obtain public feedback and suggestions.
 - ii. Project suggestions and feedback from the public and others are forwarded for consideration to relevant departments, which would likely include CD/Planning, CD/Natural Resources, Park & Rec, Transit and others.
 - iii. Staff review project nominations and forward with comments or recommendations to the Committee for consideration.
 - iv. Committee considers project nominations and makes recommendations to the Budget Committee and City Council for funding of projects.

ADOPTED by the Wilsonville City Council at a regular meeting on July 6, 2015, and filed with the Wilsonville City Recorder this date.

Tim Knapp, Mayor

ATTEST:

Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Knapp –
Council President Starr –
Councilor Fitzgerald –
Councilor Stevens –
Councilor Lehan –



600 NE Grand Ave.
Portland, OR 97232-2736
(503) 797-1700

Intergovernmental Agreement

METRO CONTRACT NO. 933299

INTERGOVERNMENTAL AGREEMENT BETWEEN METRO AND THE CITY OF WILSONVILLE TO ESTABLISH THE "WILSONVILLE-METRO COMMUNITY ENHANCEMENT PROGRAM"

THIS AGREEMENT, entered into under the provisions of ORS Chapter 190, is between Metro, a Metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, and the City of Wilsonville (the "City") an Oregon municipal corporation, whose address is 29799 SW Town Center Loop E, Wilsonville, Oregon 97070.

Section 1: Purpose

The purpose of this Agreement is to implement the provisions of Metro Code Chapter 5.06 related to the establishment of a Solid Waste Community Enhancement Program ("program") for the Willamette Resources, Inc. transfer station located at 10295 SW Ridder Road in Wilsonville, Oregon.

Section 2: Term

This Agreement begins on July 1, 2015 and terminates on June 30, 2020. The parties may agree to terminate this Agreement earlier. Metro may terminate this Agreement under Section 8. The parties may extend the term of the Agreement by written amendment.

Section 3: Collection and Distribution of Community Enhancement Fee Funds

- A. Under the terms of Metro Franchise No. F-005-08, Metro requires Willamette Resources, Inc. (the "facility") to collect and remit to Metro a solid waste community enhancement fee of \$1.00 per ton for all putrescible solid waste, including yard debris mixed with food waste, and food waste received at the facility.
- B. Metro will send to the City the solid waste community enhancement fee funds ("funds") collected in A above by January 31, April 30, July 31, and October 31 of each year this Agreement is in effect beginning October 31, 2015.
- C. At the request of the City, Metro will provide quarterly reports of activity at the facility, including data on (1) the gross weight of solid waste received in vehicles that are weighed as they enter the facility; (2) the number of other vehicles assessed fees on an estimated volume basis; and (3) the tonnage of solid waste transferred from the facility.
- D. At the request of the City, Metro will assist with the establishment and implementation of the program.

Intergovernmental Agreement

- E. The Metro Councilor for the district where the facility is located shall have the option to serve on the community enhancement committee (as provided in Section 4B) including without limitation as: 1) a member of the committee with voting rights, 2) co-chair of the committee with voting rights, or 3) non-membership on the committee (with notification of committee meetings and actions only). The Metro Councilor may change their participation role by notifying the committee at the beginning of the calendar year. Whenever a new Metro Councilor is elected or appointed, they will indicate their preferred role to the committee within 90 days of taking office.

Section 4: City Obligations

- A. The City shall establish and implement a program that complies with Metro Code Chapter 5.06 (Exhibit A), and Metro Administrative Procedures (Exhibit B). Exhibits A and B are incorporated into this Agreement and are binding on the City.
- B. The City shall establish a solid waste community enhancement program advisory committee ("committee") that complies with Exhibit A and Exhibit B. The City shall ensure that the committee fulfills its duties, including without limitation establishment of a solid waste community enhancement area boundary and compliance with Exhibits A and B. The committee membership shall include the one or more members of the City Council, four citizens of the City appointed by the Mayor, and the Metro Councilor (as provided in Section 3E) whose district includes the City. The City may include additional members at its discretion. Alternatively, the City and the Metro Councilor (as provided in Section 3E) whose district includes the City shall perform the functions of the committee.
- C. The City shall create a separate program account for deposit of the funds collected under Section 3. The City shall ensure that only projects chosen by the committee receive these funds. The City shall carry forward any funds not expended during a budget year to the following year. The City shall not use the funds for general government purposes.
- D. The City shall promote the program within the solid waste community enhancement program boundary area. The City shall publish information about the program, including without limitation funding criteria, goals, application process, and timeline, on its website and in the local newspaper.
- E. The City shall require the committee to provide an open public process for project review and selection.



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- F. The City shall require the committee to review an annual budget. The budget shall identify the expected distribution of funds for projects during a fiscal year. The committee may propose that there be no distribution of funds during a fiscal year, for a maximum of three consecutive years.
- G. The City shall ensure funding decisions are made by a majority vote of the committee. Funding for projects or programs sponsored by the city, city advisory committees, departments or special districts shall be approved at the discretion of the committee, and shall not be limited by Metro Administrative Procedures section 6.1.2.4.
- H. The City shall provide all necessary support to administer the program. The City may charge the fund no more than 20% of the annual program budget, not to exceed \$50,000, for the direct costs of administering the program. Direct costs include staff time and materials.
- I. No later than October 1 of each year beginning in 2016, the City shall provide a written report to Metro on the program that includes revenues and expenditures of the program funds and the fund balance carried forward, if any. The report also shall include a general accounting of any funds expended for program administration.
- J. The City shall maintain complete and accurate records related to the administration of the program and all funds expended and carried forward, and shall make these records available to Metro for inspection, auditing and copying.

Section 5: Notices

Legal notice provided under this Agreement shall be delivered personally or by certified mail to the following individuals:

For the City:

Office of City Counsel
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070

For Metro:

Office of Metro Attorney
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Management of this Agreement will be conducted by the following designated Project Managers:

For the City:

Bryan Cosgrove, City Manager
City of Wilsonville
29799 SW Town Center Loop E
Wilsonville, OR 97070
(503) 570-1503

For Metro:

Heather Nelson Kent
Metro
600 NE Grand Ave.
Portland, OR 97232
(503) 797-1739



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The City may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Manager by written notice to the City.

Section 6: Indemnification

Subject to the limits of the Oregon Constitution and Oregon Tort Claims Act, the City shall hold harmless Metro, its officers and employees from any claims or damages or property or injury to persons or for any penalties or fines, for the City's actions under this Agreement.

Section 7: Dispute Resolution

The parties shall attempt to negotiate resolutions to all disputes arising out of this Agreement.

Section 8: Termination or Modification

During the term of this Agreement, each party retains the right to terminate the Agreement as of any anniversary date by written notice delivered to the other party no later than 60 days prior to the anniversary date. The parties may terminate this Agreement at any time for nonperformance of any material term thereof. Metro may modify or terminate this Agreement related to changes based on a substantive amendment, renewal or termination of the Metro franchise issued to the facility described in Section 3A.

Section 9: Insurance

The City agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. The City also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

Section 10: Integration and Amendment

This writing contains the entire Agreement between the parties, and may only be amended by written instrument, signed by both parties.

Section 11: Severability

If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.



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Section 12: Notice of Default

If a party determines that a default exists, that party shall give thirty days' written notice to the other party, which notice shall specify the nature of the default and shall give the other party an opportunity to cure the default before taking any further action.

City

Metro

By: _____

By: _____

Bryan Cosgrove, City Manager
Print name and title

Print name and title

July 7, 2015
Date

Date

BM:bjl
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